

Vickie A. Askins
(b) (6)
Cygnet, Ohio 43413
(b) (6)

December 28, 2017

Robert A. Kaplan, Acting Regional Administrator
U.S. Environmental Protection Agency – Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

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NPDES PROGRAMS BRANCH
EPA, REGION 5

RE: Addendum #5 to November 2011 Petition

Dear Administrator Kaplan:

The purpose of this addendum to our 2011 petition is to update you about Ohio's unlawful split permitting programs for concentrated animal feeding operations (CAFOs). As you are aware, the Humane Society of the United States (HSUS) and other large environmental groups filed a Complaint earlier this year for Declaratory and Injunctive Relief in federal court because EPA "has unreasonably delayed its response to the [2009] petition, and this delay allows serious, preventable harms to public health and the environment to persist." Although the HSUS petition was filed under the Clean Air Act, our 2011 petition contains serious complaints about CAFOs under the Clean Water Act. Thus, we believe your blatant disregard for the law regarding our petition would also constitute an unreasonable delay.

Attached is a recent article published in the *Toledo Blade* (attachment A) in which experts are finally expressing concern about manure and large farm operations in efforts to reduce phosphorus loading into western Lake Erie by 40%. This article mentions that "scientists have found soil at some animal farms across the state to be as high as 1,000 ppm and even 2,000 ppm" and raises questions about larger operations, which I assume means CAFOs. I believe the egregiously high phosphorus soil testing levels are due to Ohio's split permitting scheme that allows CAFOs to spread millions of gallons and megatons of untreated nutrient-rich animal waste with no accountability and very little oversight.

A perfect example of the absurdity of Ohio's unlawful split CAFO permitting scheme occurred earlier this year. There were several manure-based "discharges" in the western Lake Erie watershed that killed over 66,000 fish. Ohio EPA did little (although Ohio EPA is the only State agency with authority over point sources and "discharges", most of their statutes under ORC 6111 regulating "manure" have been repealed); Ohio Department of Natural Resources issued fines; and then Ohio Department of Agriculture (a State agency with no authority over point sources or "discharges") forgave the fines. This seems to make a mockery of the Clean Water Act. According to the attached Ohio EPA CAFO NPDES Permit Fact Sheet – "It must be noted that there is **no** exemption for large storm events – a discharge at any level or occurrence of precipitation needs a permit." (Attachment B) However, the public records I obtained from Ohio EPA did not mention anything about permits in response to these manure discharges.

This addendum details more concerns, in addition to the many concerns already detailed in our petition and in the previous four addendums. Sadly, these serious concerns have been mainly ignored by U.S. EPA over the past six years. Nevertheless, below are updates and additional questions for your timely review and response:

1. **FOIA Requests** - On June 12, 2017, Petitioner Jack Firsdon submitted a request to former U.S. EPA Administrator Gina McCarthy under the Freedom of Information Act in which he

requested "a copy of the U.S. EPA Region 5 current/latest 'protocol' draft you are using to review Ohio's NPDES Program against the allegations in the Firsdon/Askins November 2011 petition." Christopher Korleski, Director, Water Division, replied on June 28, 2017, that "EPA has no records responsive to your request."

- A January 4, 2016 letter from Petitioner Jack Firsdon to Administrator Gina McCarthy requested an investigation into our 2011 Petition. Jack asserted that your failure to respond to our Petition within a reasonable time violated the Administrative Procedure Act.
- Tinka Hyde, Director Water Division, replied on January 26, 2017, that "EPA may conduct an informal investigation of the allegations in a petition to determine whether cause exists to commence withdrawal proceeding. EPA is reviewing the petition, the supplemental information, court decisions, and information available regarding the Ohio Environmental Protection Agency's administration of the National Pollutant Discharge Elimination System (NPDES) program. Upon completion of this review EPA will provide a response to the petitioners."
- A February 13, 2013 letter to Petitioner Vickie Askins from Director Hyde stated "Region 5 is preparing a 'protocol' or plan for reviewing the State's NPDES program against the allegations in the petition. We intend to share a draft of the protocol with you and the State for comment when it is ready."
- Region 5 responded numerous other times they were preparing a draft protocol.

Would you please explain why Region 5 has repeatedly stated over the past six years they are reviewing the allegations in our petition and developing a draft protocol when this is clearly not true?

2. **Petition** - We were told by an Ohio EPA employee that U.S. EPA could not approve the ODA's 2015 transfer application until after they had satisfactorily addressed all the issues detailed in our November 11, 2011 petition.

Is it true that EPA cannot approve the ODA's 2015 transfer application until they respond to our 2011 petition?

3. **Ohio's unlawful split CAFO permitting scheme** - As you know, Ohio EPA is the only State agency approved to administer Clean Water Act programs for all point sources of pollution - including CAFOs. Ohio legislators attempted to transfer the CAFO portion of this federal program to the ODA more than 17 years ago - but U.S. EPA has never approved any transfer of permitting authority. Nevertheless, Ohio EPA has fundamentally disbanded its CAFO permitting unit and has allowed most of Ohio's CAFO NPDES permits to expire.

Would you please investigate why nothing has been done about this clear abdication of federal duties by Ohio EPA?

4. **Ohio has no valid State statutes to regulate CAFOs as required by 40 CFR Part 123:**

- A. **SB 141**, amended by HB 363 in 2009, set up statutes under ORC Section 903 for [state] Permits to Install (PTIs), [state] Permits to Operate (PTOs), and [federal] NPDES permits. However, the PTI and PTO ORC sections include the following disclaimer "operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System [NPDES] program submitted

by the Director of Agriculture under Section 903.08 of the Revised Code as amended by this act." (See attached ORC 903.05) As you are aware, U.S. EPA has never approved the ODA's NPDES program.

- According to your website (attachment C) - www3.epa.gov/region5/water/npdestek/odacafo.htm - "ODA finalized revisions to its NPDES rules for CAFOs in January 2009 [HB 363]. Ohio enacted revisions to its statutes regarding ODA's implementation of the NPDES program for CAFOs in December 2009. ODA is in the process of making additional revisions to its rules in response to revisions to the federal CAFO regulations published in November 2008. ODA would need to adopt and submit these revisions as part of a revised request for program transfer."

Please note that Ohio did **not** enact these revisions as stated above because these revisions are not "operative" until the date on which the U.S. EPA Administrator approves the ODA's NPDES program for CAFOs. I urge you to investigate.

- B. According to *Baldwin's Ohio Revised Code Annotated Title 9 Agriculture Animal Fences* - "2009 H 363 §3, eff. 12-22-09" is "Uncodified Law". **903.02, 903.03, 903.04, 903.05, 903.06, 903.07, 903.10 and 903.17** "become operative on the date on which the Administrator of the U.S. EPA approves the NPDES program submitted by the Director of Agriculture under section 903.08. (Please note that 903.02, 903.03 and 903.05 are statutes for "state" PTIs and "state" PTOs.)

Why would statutes for "state" permits require the approval of the U.S. EPA Administrator?

- C. **ODA CAFO state statutes are not operative** - The ODA started issuing CAFO permits over 15 years ago under Ohio Revised Code Chapter 903 which originated in SB 141. These state statutes have contained a disclaimer for more than eight years under HB 363 that they are not operative until the U.S. EPA approves their program (See ORC 903.05 attachment D).

Consequently, the ODA has no authority to regulate CAFOs or issue CAFO permits because their laws and program are not yet operative. Please investigate.

- D. **Ohio EPA CAFO rules were repealed** - SB 141 repealed certain ORC statutes under Section 6111 which had authorized the Ohio EPA to administer regulations for CAFOs/CAFFs as well as animal waste/manure under the Clean Water Act. SB 141 contained the following amendments:

ORC Sec. 6111.45: "...As used in sections 6111.44 to 6111.46 of the Revised Code, "industrial waste" means sludge or sludge materials...but does not include storm water from any animal feeding facility, as defined in section 903.01 of the revised code, or manure, as defined in that section."

Section 2 under 6111.45 states "That existing sections...6111.44 and 6111.45 of the Revised Code are hereby repealed."

Consequently, the Ohio EPA has no authority to regulate CAFOs or issue CAFO permits because their "manure" laws were repealed. Please investigate.

- E. ORC 903.01 contains the following definition under - (S) "NPDES permit" means a permit issued under the national pollutant discharge elimination system established in section 402

of the Federal Water Pollution Control Act and includes the renewal of such a permit. "NPDES permit" includes the "federally" enforceable provisions of [state] **permit to operate [PTO]** into which NPDES permit provisions have been incorporated.

Questions –

- 1) How can Ohio EPA issue NPDES permits or regulate CAFOs since their existing ORC sections regarding "manure" were repealed?
- 2) How can a "state" PTO include "federally" enforceable provisions?

5. **Federal Funding** - Is U.S. EPA still committing the fiscal grant of monies to Ohio EPA pursuant to Section 106 of the Clean Water Act?

If yes, has Region 5 provided any oversight over Ohio EPA's NPDES permit program for CAFOs?

6. (b) (6) **Dairy NPDES Permit** – As detailed in the petition and also in the addendums, the former (b)(6) Dairy in Wood County is a prime example of why Ohio's split CAFO permitting programs are unlawful. Petitioner Vickie Askins submitted a timeline with Addendum #4 detailing numerous violations and other serious problems by several owners/operators of this NPDES permit.

In response to a July 2016 Verified Complaint, Ohio EPA Director Craig Butler decided on June 12, 2017, that numerous transfers of the NPDES Permit were valid even though 1) the facility was still not in compliance with NPDES permit closure regulations, and 2) there was never a valid manure management plan. No renewal application was submitted to Ohio EPA, but since there were "no cows on site" for a while, he stated "no CAFO NPDES permit is required." Director Butler did not cite a statute upon which he based this decision and did not respond to my follow-up letter requesting a specific statute. Mr. Butler did notify me in his decision letter that I could appeal his action but, without an applicable statute, I feel this was an empty gesture. Please investigate.

7. **ODA's Fraudulent CAFF Program** - According to your website – "EPA's final decision on Ohio's request will be based on a determination of whether ODA has the legal authority, as well as the ability and resources, to administer the NPDES program for CAFOs, consistent with the Clean Water Act and federal requirements for authorized state NPDES programs."

Please accept the following as proof that the ODA's program for CAFOs is not consistent with the CWA or federal requirements:

A. I have attached an "**Alternative Facts Sheet**" at the bottom of this Addendum which contains evidence that the ODA's program is false and misleading. This fact sheet documents fraudulent and missing data in ODA permits.

B. Adam Rissien, Director of Clean Water at the Ohio Environmental Council published a report in August 2017 - **Ohio's Concentrated Animal Feeding Facilities - A Review of Statewide Manure Management and Phosphorus Applications in the Western Lake Erie Watershed** – See <http://bit.ly/2j6Ryzp> . This report delves into Ohio's livestock industry, evaluating the vast quantities of manure it produces, and the implications for Lake Erie's toxic algae problem. Adam investigated how permitted livestock facilities in Ohio manage the manure and phosphorus generated annually with a special emphasis on phosphorus applications in WLEW.

After reviewing thousands of public documents Adam concluded – “The number one cause of toxic algae in Lake Erie is the overabundance of phosphorus coming from crop fields in the lake’s watershed. With manure applied excessively over 70 percent of the time, it’s clear more needs to be done to address this critical problem that puts water sources at risk.” Adam’s report provides documentary evidence to substantiate this claim.

Ultimately, Adam confirmed a majority of CAFFs in the WLEW applied manure when soil test phosphorus levels were well above the critical maintenance level or what is called the “agronomic rate”. He was not surprised to discover this because ODA’s rules allow for these applications. He thought this implied “all the manure sold or transferred through D&U [Distribution & Utilization method of manure management] is also being over applied. This is simply the industry standard, so it’s safe to assume the thousands of animal feeding operations in Ohio also follow this trend.”

I feel that Adam’s report definitively proves the ODA’s program not only allows but “permits” the egregious over application of manure by ODA-permitted facilities. I believe ODA’s CAFF permitting program provides regulated harm through legalized loopholes, exemptions, and permits.

Has Region 5 communicated with ODA regarding LEPP statutes and rules that do not comply with federal regulations?

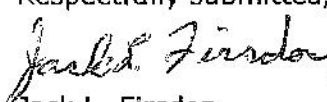
8. Additional Data – Attachment E contains 60 pages of documents for our anticipated meeting with Region 5 staff.

Although Ohio received authorization to administer the Clean Water Act, EPA retains a vital role in ensuring that Ohio EPA implements programs that meet federal requirements. According to federal regulations, EPA should provide appropriate oversight so that it knows when states fail to meet their federally mandated enforcement commitments. As such, EPA must monitor states to keep apprised of their enforcement activities, a task largely left to EPA regions.

We appreciate the opportunity to add a fifth addendum to our 2011 petition and look forward to meeting with Region 5 staff in the near future. Please advise how we could facilitate this meeting. Hopefully you agree it would be inappropriate for ODA personnel to attend.

CAFOs present a clear and present danger to Lake Erie and to other lakes and rivers as well. We rely on you to ensure that industrial agricultural threats do not jeopardize our health and resources. Please allow us to work with you to ensure a safe future for all Americans and our environment.

Respectfully submitted,


Jack L. Firsdon


Larry D. Askins


Vickie A. Askins

Attachments

cc: Senator Sherrod Brown
Congressman Bob Latta

The Ohio Department of Agriculture's
Livestock Environmental Permitting Program
"ALTERNATIVE FACTS" Sheet

INTRODUCTION: Animal manure from factory farms is a major contributor to the toxic algae in Ohio's lakes and rivers quite simply because Ohio's laws do not comply with the Clean Water Act. One big reason is that Ohio regulations inexplicitly allow concentrated animal feeding operations (CAFOs or factory farms) to apply manure in excess of the agronomic needs of the next crop. Improperly applied manure has been associated with significant environmental and public health concerns.

Ohio has conflicting and troublesome rules for manure management and also for phosphorus recommendations. Listed below are examples of serious problems we have found with the Ohio Department of Agriculture's (ODA) Livestock Environmental Permitting Program (LEPP):

1. **CRITICAL DATA MISSING IN ODA MMPs** - The Distribution & Utilization (D&U) manure loophole is the ultimate "Alternative Fact" exploited by the ODA. This loophole not only transfers manure, it also transfers liability from the manure producer to a third party. Instead of hundreds of pages of soil sampling and cropping data, etc., this method of manure management consists of one sentence - "All manure will be sold to others not under the control of the CAFO owner". There is little sunshine on what happens to this manure because application fields are no longer identified, there are no cropping schedules, and most importantly, there are no soil tests.

It is important to note that a soil test is critical to ensure the application of enough fertilizer/manure to meet the requirements of the crop while taking advantage of the nutrients already present in the soil.

D&U manure management plans (MMPs) contain no "nutrient management plan based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters"- as clearly required by the Clean Water Act. This loophole must be closed without delay!

2. **FALSE/FRAUDULENT DATA in ODA MMPs** - It is also imperative to investigate why so many ODA MMPs contain soil tests that are significantly higher than "agronomic rates" (approx. 30 ppm or 60 lbs P) which is mandated by the Ohio Administrative Code. Listed below is information regarding three CAFOs, two of which are in the western Lake Erie watershed, all of which contain very questionable nutrient data. The MMPs below contain numbers that breach reasonable norms:

- A. **MSB Dairy** (fka (b) (6) Dairy) - Wood County - Cedar Portage Watershed - *ODA Fact Sheet* (b)(6)) mature dairy cows producing 30.1 million gallons of liquid manure and 6,097 tons of manure solids. MSB has 116 acres and will distribute (D&U) to 1,800 "other" acres.

According to the Appendix to Ohio Administrative Code 901:10-2-10; one 1,400 lb. lactating dairy cow produces .52 lbs/P205 per day and one dry cow produces .15 lbs/P205/day - so this Dairy

would produce over 501,000 lbs/P205/year (15% dry / 85% lactating). The normal phosphorus removal for most crops is less than 60 lbs/P205/acre. Therefore, the (b) (6) cows in this MMP would need over 8,300 acres in order to agronomically spread the nutrients in the waste - but this Dairy will spread its waste on only 1,916 acres.

This calculation would lead a reasonable person to believe that this Dairy needs 6,400 more acres in order to apply its manure according to agronomic crop needs. Otherwise, this could result in the application of almost 262 lbs. of P205 on every acre for every year of this five-year permit and that doesn't take into account the current soil test phosphorus levels.

There are very concerning inconsistencies in past and current MSB MMPs, for example:

- The ODA October **2004** Farm Nutrient Budget showed 245,500 lbs. P205 for "All Manure" produced by (b) (6) cows or **112 lbs. P205 per cow per year.**
- The ODA March **2005** Farm Nutrient Budget showed 157,451 lbs. P205 for "All Manure" produced by (b) (6) cows or **72 lbs. P205 per cow per year.**
- The ODA August **2008** Farm Nutrient Budget showed 126,275 lbs. P205 for "All Manure" produced by (b) (6) cows or **57 lbs. P205 per cow per year.**

According to the OAC Appendix to OAC 901:10-2-10 (dated 8-17-2005)

(b) (6) lactating cows times .42 x 365 days = 286,671 lbs. P205

(b) dry cows times .20 x 365 days = 24,090 lbs.

(b) (6) cows 310,761 total lbs. P205

Or 141 lbs. P205 per cow per year

- The ODA April **2015** Total Nutrient Budget shows 2,041 lbs. P205 for manure under the control of the facility plus 63,961 lbs. P205 for D&U manure for a total of 66,002 lbs. of P205 for (b) (6) cows which equates to **22 lbs. P205 per cow per year.**

According to the updated OAC Appendix to OAC 901:10-2-10 (dated 5-29-2014)

(b) (6) lactating cows times .52 x 365 days = 477,537 lbs. P205

(b) dry cows times .15 x 365 days = 24,309 lbs.

(b) (6) cows 501,846 total lbs. P205

Or 170 lbs. P205 per cow per year

MMP Date	# of Animals	P205/Cow/Year in MMP	P205/Cow/Year per OAC	Phosphorus in MMP	Phosphorus per OAC
2004	(b) (6)	112	141	245,500	310,761
2005	(b) (6)	72	141	157,451	310,761
2008	(b) (6)	57	141	126,275	310,761
2015	(b) (6)	22	170*	66,002	501,846*

*OAC Appendix revised in 2014.

According to this MMP, the cows in this expanded Dairy would only be producing 13% of the P205 as calculated according to the OAC Appendix. The difference between the OAC Appendix and the MMP equates to under estimating the P205 by 435,844 lbs. of P205 each year. This equates to over 2 million lbs. of P205 being unreported and unregulated during the five-year duration of this current MMP.

- B. (b) (6) **Pork, LLC** – Van Wert County – Auglaize Watershed – *ODA Fact Sheet* – (b) (6) swine weighing more than 55 pounds producing **1.8 million gallons** of liquid manure and 22.2 tons of mortality compost material. All liquid manure land applied each year on 1,172 acres. All mortality compost material land applied on 34 acres under control of owner.
- One of the (b) (6) Pork fields shows a soil test of 695 ppm P which equates to almost 1,400 lbs. of P and would be more than 20 times higher than the crop needs.
 - The MMP shows this CAFO will produce **51,080 lbs. P205** each year but, according to the OAC Appendix, (b) (6) hogs actually excrete **80,482 lbs. P205/year**.
- C. **Pheasant Run Swine Farm** (b) (6) Farms) – Defiance County - Upper Maumee Watershed – *ODA Fact Sheet* - (b) (6) swine weighing 55 lbs. or more producing **12.7 million gallons** of liquid manure and 74 tons of solid mortality compost. All liquid manure land applied each year on 120 acres with a center pivot irrigation system. All mortality compost distributed to crop farmers as supplement nutrient source that supplies grain back to feed animals.

The MMP shows that this CAFO will land apply only **10,143 lbs. P205** each year but according to the OAC Appendix – (b) (6) hogs excrete **80,482 lbs. P205** per year. This OAC Appendix is supposed to be used for planning purposes.

Assuming soil tests for the manure application fields average 30 STP – and they apply 30 lbs. of P205 each year – both (b) (6) Pork and Pheasant Run Swine Farm owners would need **2,683 acres** upon which to *agronomically* apply the manure each year. (b) (6) Pork supposedly has 1,172 acres / Pheasant Run Swine Farm has only 120 acres.

The (b) (6) Pork MMP shows that it will produce 1.8 million gallons of liquid manure whereas, Pheasant Run Swine Farm will produce 12.7 million gallons of liquid manure; however, the OAC Appendix actually calculates that these hogs will excrete 2.4 million gallons of liquid manure. Obviously, there are no standards being used to determine this critical data in ODA MMPs.

- D. (b) (6) **Farms** (b) (6) Farms) Darke County – Upper Great Miami River Watershed – *ODA Fact Sheet* – (b) (6) swine weighing less than 55 lbs. producing 1.4 million gallons of manure annually of which 800,000 gallons will be sold or given to other farmers and about 600,000 gallons will be spread on 93 acres of Veitch crop land. The phosphorus numbers were not disclosed on the ODA fact sheet.

The soil tests in the (b) (6) Farms MMP already show excessive levels of phosphorus, i.e. there are 37 manure application fields with a soil test >150 ppm. The average STP for the fields in this MMP was more than double (>300 ppm) the ODA's inflated 150 ppm maximum for applying additional manure and more than ten times the agronomic need of the next crop. According to Appendix E Table 2 to OAC 901:10-2-14 – If P soil test level is >150 ppm Bray P1 – no additional P205. According to recommendations, no phosphorus should be added when STP levels exceed 30 ppm.

The ODA approved additional manure application on these fields by simply stating "...as provided by the LEPP office - the application rate for phosphorus on these fields is limited to the annual crop removal rate...Simple math shows a [reduction of] the phosphorus content of the soil by 2.5 ppm

per year." Please note that the ODA should have cited an OAC rule, not the "ODA LEPP office", to justify these clear violations. Ironically, these fields would not require additional phosphorus applications for more than **100 years!**

- 3. ODA MMPS ARE NOT BASED ON THE AGRONOMIC CROP NEEDS** –There are three main nutrients in animal manure: nitrogen (N), phosphorus (P205), and potash (K20). According to the ODA LEPP rules, "land application of manure at each land application area shall be conducted to utilize nutrients at agronomic rates and to minimize nutrient runoff to waters of the state." Sadly, this is what the ODA "says" but this is clearly not what they "do". "Agronomic" is defined as which nutrients (fertilizers) the crop needs and when and how to apply these nutrients.

OSU Extension – Best Management Practices: Land Application of Animal Manure (AGF-208-95) states – "Agronomic crops grown in Ohio rarely respond to applications of additional phosphorus when soil test levels exceed 30 ppm (60 lbs/acre) of phosphorus, and crops grown in soils with very high phosphorus levels may actually produce lower yields due to nutrient imbalances." It goes on to state "There is no agronomic justification for raising soil-test phosphorus levels above those that provide adequate nutrition to the crop."

Manure applications are not supposed to exceed "agronomic application rates" which means the amount applied must be less than, or equal to, the amount of nutrients needed by the next crop. In other words, rates of P application are usually established by crop needs and modified according to what is already in the soil as measured by soil test P (STP) methods.

CAFO Name	# Animals	Millions/ Gallons	Solid Tons	Lbs P205	Manure Acres	P205 in MMP	P205 per OAC
VDH	(b) (6) >55lbs	1.8	22- compost	51,080	D&U +1,206	51,080	80,482
Pheasant Run	(b) (6) >55lbs	12.7	74- compost	10,143	D&U +120	10,143	80,482
(b) (6) Farm	(b) (6) <55lbs	1.4	0- incinerate	N/A	D&U + 93	N/A	43,800

- A. **Manure vs. Commercial Fertilizer** Phosphorus Recommendations: ODA's rules recommend no more manure applications if the soil tests = 150 ppm P205 whereas, OSU agriculture experts recommend zero phosphorus application if soil tests = 30 to 40 ppm P205.
- **OSU Extension Bulletin 472 - Ohio Agronomy Guide 14th Edition** – Phosphate fertilizer recommendation is zero if STP = **40 ppm P**.
 - **ODA Appendix A to OAC 901:10-2-14:** Use Appendix E, Table 1 (P-Index) if the Bray P1 or equivalent value of the soil test is over **150 ppm**. P-Index may only be relied upon for a transitional period of time to allow the owner or operator an opportunity to find other fields or other methods to distribute nutrients from the facility in order to achieve less than **150 ppm**.

- B. **Manure Nutrient Ratios** - Phosphorus is essential for crop production, but the challenge is to keep the phosphorus on the land and out of the water. Nutrient-rich animal manure is commonly over applied in order to satisfy the nitrogen requirements of the next crop. However, due to the low nitrogen/high phosphorus ratios in manure, this practice can result in the application of phosphorus well in excess of the crop needs for P205 and K20, saturating soils over time.

The ODA regularly allows CAFO owners to design their MMPs using nitrogen as the Most Limiting Factor (MLF). [OAC 901:10-2-14 - Manure application rates shall be based on the MLF of rates derived from ODA rules and Appendices, whichever factor is determined to be the most restrictive factor for purposes of protecting waters of the state.”]

According to *Tri-State Fertilizer Recommendations* - the agronomic crop needs for 160 bushels of corn per acre is: 190# N; **60# P205**; and 43# K20 (limited to just the crop removal). Another problem is the imbalance of nutrients in the manure from different animal species. According to the *Ohio Livestock Manure Management Guide* - the ratio of nutrients in manure is as follows:

Dairy	190# N; 81# P205 and 140# K20.
Swine	190# N; 159# P205 and 127# K20.
Poultry	190# N; 196# P205 and 116# K20.

Thus, in order to satisfy the 190# crop needs for nitrogen, the manure application rate would exceed the agronomic needs of the next crop for phosphorus and potash. This means in order for a farmer to get the nutrient he wants, he would also get the other two regardless of the crop needs; whereas, with commercial fertilizer he could only apply the nutrient needed.

SUMMARY: Seventeen years ago, Ohio legislators approved the transfer of CAFO permitting authority from the Ohio EPA to the ODA but the U.S. EPA has never approved this transfer. The ODA's LEPP is now fundamentally broken because it's riddled with huge loopholes. According to a study of CAFO permitting programs by the University of Nebraska a few years back, ODA's program came in dead last of the top ten hog-producing states. Sadly, Lake Erie and other Ohio lakes are doomed because Ohio's agencies and legislators have been captured by the very industry they are supposed to regulate.

Larry & Vickie Askins
July 25, 2017

Study details game plan for reducing algae woes

State should focus on larger farming operations

By TOM HENRY
BLADE STAFF WRITER

LAKESIDE, Ohio — A scientific paper written as a blueprint for addressing Lake Erie algae calls on the agricultural industry to focus more on injecting manure and other fertilizers three to five inches underground and limiting phosphorus applications to 50 parts per million or less.

That's a concentration the state of Ohio has as a limit for crop fields. But livestock operations can apply as much as 150 ppm, meaning the paper's suggested limit could pose a challenge for some facilities.

While still recognizing the value of other more traditional best management practices, such as windbreaks, buffer strips, and cover crops, the research document claims Ohio could achieve its goal of reducing phosphorus loading into western Lake Erie by 40 percent if all farmers embraced those two simple concepts.

The so-called "white paper" was presented to 60 people at a Lake Erie Foundation event inside Lakeside's Wesley Lodge by Jeff Reutter, special adviser for Ohio Sea Grant and Ohio State University's Stone Laboratory. He said scientists have found soil at some animal farms across the state to be as high as 1,000 ppm and even 2,000 ppm.

"We can't identify those fields now because of privacy laws, and that's unfortunate," he said.

Mr. Reutter told The Blade in a follow-up interview those unusually high concentrations are at "legacy fields" that preceded many of today's operations and are not indicative of modern practices.

The paper raised questions about where the state could best put its attention: It found that 97 percent of the acreage

draining into the western Lake Erie watershed belongs to farms 50 acres or larger. Policymakers, therefore, might want to focus more on larger operations, Mr. Reutter said.

The paper distills known data about the runoff issue into policy recommendations aimed at helping Ohio achieve its goal of reducing phosphorus loading into western Lake Erie 40 percent by 2025. Michigan and Ontario also have committed to that goal.

Ohio Sen. Randy Gardner (R., Bowling Green) said he found four recommendations to be particularly useful. Those include application rates based on soil tests; the need for more fertilizer injection instead of surface application; more efforts to control erosion, and better ways to control drainage.

He called the report "a game-changer."

"We have our game plan now. Let's execute it," Mr. Gardner said.

One idea he said he liked was having local soil and water conservation districts promote "equipment-sharing" among farmers. Large, modern machines that inject manure beneath the surface cost about \$250,000.

Tim Brown, a former legislator now serving as Toledo Metropolitan Area Council of Governments president, said his agency soon will pair up with Ohio Northern University on a major project to promote wider use of drainage-control structures that can hold back water in drainage tiles. Their message will be how costs for those devices can be mitigated with better yields while helping to keep phosphorus out of Lake Erie.

The Lake Erie Foundation is a nonprofit that promotes the lake's economic and environ-

mental health. Its members include business executives, educators, farmers, and fishermen, as well as environmentalists.

"We're convinced if we don't address manure this problem is not going to be solved," one of its board members, Matt Fisher, said.

Lake Erie-based tourism and recreation generates \$14 million a year for Ohio's economy and supports 125,000 jobs, Larry Fletcher, Lake Erie Shores & Islands president, said.

Dave Spangler, Lake Erie Charter Boat Association vice president, said this year's algae was so bad he didn't run a single charter in October. One of his group's charter boat captains reported a 40 percent loss to his business this year, he said.

"We are the largest charter fleet in North America. But we're losing ground rapidly. Our businesses cannot take these kinds of hits," Mr. Spangler said.

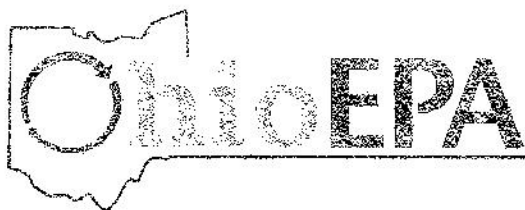
(b) (6), Miller Boat Line co-owner, said she is dismayed by the reactions of ferry customers when they see foamy water that resembles pea-green soup.

"Inevitably, questions about safety arise. These questions, unfortunately, have become resounding year after year," she said.

Also Monday, the Lake Erie Foundation announced it had received the largest donation in its history.

(b) (6) a Florida couple with a summer home in Vermilion, Ohio, put more than \$1 million into a trust for use over 15 years.

Contact Tom Henry at:
thenry@theblade.com,
419-724-6079, or on
Twitter @ecowriterohio.



FACT SHEET

Division of Surface Water

March 2015

CAFO NPDES Permit –

General Overview of Federal Regulations

This fact sheet briefly outlines the regulations and requirements for livestock producers in Ohio.

A Brief History

Since 1976, the Clean Water Act (CWA) has defined Concentrated Animal Feeding Operations (CAFOs) as point sources and has required regulation of these operations under the National Pollutant Discharge Elimination System (NPDES) permit program. However, before 2003 CAFOs that did not have a discharge to surface waters, unless associated with a 25-year, 24-hour storm event, were exempt from the requirement to obtain a permit. As the result of dramatic changes in the livestock industry and a 1992 court-issued consent decree, in 2003 U.S. EPA revised the Code of Federal Regulations (CFR) Section 40 Parts 122, 123, and 412, then again in 2008 to strengthen and clarify the regulation of CAFOs.

CAFO Definitions

In the 2003 regulations, U.S. EPA eliminated the animal units terminology and defined three CAFO categories (large, medium and small) and listed the range of animals applicable to each category.

Under these definitions, a **large CAFO** is an animal feeding operation (AFO) that stables or confines as many as, or more than, the following numbers of animals:

- 700 mature dairy cows (milked and dry);
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves (includes heifers, steers, bulls, and cow/calf pairs);
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers (liquid manure handling system);
- 125,000 chickens other than laying hens (other than liquid manure handling system);
- 82,000 laying hens (other than a liquid manure handling system);
- 30,000 ducks (other than a liquid manure handling system); or
- 5,000 ducks (liquid manure handling system).

A **medium CAFO** is an AFO in which the type and number of animals that is stabled or confined falls within any of the following ranges:

- 200-699 mature dairy cows (milked and dry);
- 300-999 veal calves;
- 300-999 cattle other than mature dairy cows or veal calves (includes heifers, steers, bulls, and cow/calf pairs);
- 750-2,499 swine each weighing 55 pounds or more;
- 3,000-9,999 swine each weighing less than 55 pounds;
- 150-499 horses;
- 3,000-9,999 sheep or lambs;
- 16,500-54,999 turkeys;
- 9,000-29,999 laying hens or broilers (liquid manure handling system);
- 37,500-124,999 chickens other than laying hens (other than liquid manure handling system);
- 25,000-81,999 laying hens (other than a liquid manure handling system);
- 10,000-29,999 ducks (other than a liquid manure handling system); or
- 1,500-4,999 ducks (liquid manure handling system).

And either one of the following conditions are met: (A) pollutants are discharged directly into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or (B) pollutants are discharged directly into waters of the

United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

A **small CAFO** is an AFO that is not a medium CAFO but has been designated as a CAFO by the director after determining that the operation is a significant contributor of pollutants to waters of the United States.

Major Requirements

Under the 2008 federal regulations, operations meeting the definition of a large or medium CAFO must apply for an NPDES permit if they discharge or propose to discharge. A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur.

It must be noted that there is no exemption for large storm events – a discharge at any level or occurrence of precipitation needs a permit. Also, for large CAFOs, discharges from land application fields under the control of the CAFO that do not meet the agricultural storm water exemption require coverage by an NPDES permit.

An objective evaluation of the operation should be conducted to determine if the operation will discharge. U.S. EPA has provided suggestions for this evaluation in their guidance document Implementation Guidance on CAFO Regulations – CAFOs that Discharge or Propose to Discharge which can be found at <http://water.epa.gov/polwaste/npdes/afo/Implementation-Information.cfm>.

Note that medium CAFOs do not need to be designated as a CAFO. If they meet the definition and discharge or propose to discharge, they must apply. Small CAFOs will be notified to apply for an NPDES permit when they are designated as a CAFO. There are penalties for facilities that meet the large and medium CAFO definitions and discharge or propose to discharge, but fail to apply for coverage.

The permit requirements in the federal rule include:

- Prohibition of discharge from the operation's production area, except in the event of a 25-year, 24-hour storm event (or 100-year, 24-hour storm event for new veal, poultry, and swine facilities) if the required records are maintained. (Note: Even if a CAFO only discharges in these events, they are no longer exempt from being required to obtain a permit.)
- Development and implementation of a manure management plan that includes best management practices to protect water quality.
- Application of manure based on nitrogen and phosphorus restrictions.
- Record-keeping.

- Submission of annual report.

The production area includes the animal confinement areas, manure storage areas, raw materials storage areas and waste containment areas.

The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, barnyards, medication pens, animal walkways and stables.

The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments and composting piles.

The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials.

The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production areas is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

Storm water contaminated by pollutants in the production area cannot be discharged during rain events less than the 25-year, 24-hour storm for most facilities, or the 100-year, 24-hour storm for new swine, veal and poultry facilities. Storm water from poultry operations that is contaminated by particles from fans settling on the ground may be permitted to discharge if covered by an NPDES permit.

Who Will Enforce These Regulations?

In the State of Ohio, Ohio EPA has been delegated from U.S. EPA to implement the NPDES permit program. Therefore, CAFOs must apply to Ohio EPA for coverage under the NPDES permit. The State has petitioned U.S. EPA for transfer of the CAFO NPDES permit program to the Ohio Department of Agriculture (ODA), and that petition is under review.

Contact

For more information visit the Ohio EPA CAFO webpage or contact Ohio EPA directly at:

Ohio EPA
Division of Surface Water
(614) 644-2001
P.O. Box 1049
Columbus, Ohio 43216-1049
www.epa.ohio.gov/dsw/cafo/index.aspx

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Ohio CAFO Program

You will need the free Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more, and for a link to the free Acrobat Reader.

In January 2007, EPA received Ohio's request to allow the Ohio Department of Agriculture to administer the part of the NPDES program that deals with concentrated animal feeding operations. The Ohio Environmental Protection Agency would continue to administer the program for all point sources other than CAFOs and storm water associated with construction activity at animal feeding operations.

In October 2008, following an in-depth review of Ohio's request, EPA notified the public that we proposed to approve the ODA program. The proposed approval was contingent on the state making specified changes to its statutes and regulations. The public notice appeared in the Federal Register and several Ohio newspapers. EPA conducted a public hearing and open house during the comment period, which ended in December 2008. EPA received over 6000 comments regarding the proposed approval. We are reviewing the comments and will respond to them in a responsiveness summary that will be posted below when we reach a final decision on the proposal.

ODA finalized revisions to its NPDES rules for CAFOs in January 2009. Ohio enacted revisions to its statutes regarding ODA's implementation of the NPDES program for CAFOs in December 2009. ODA is in the process of making additional revisions to its rules in response to revisions to the federal CAFO regulations published in November 2008. ODA would need to adopt and submit these revisions as part of a revised request for program transfer.

EPA's final decision on Ohio's request will be based on a determination of whether ODA has the legal authority, as well as the ability and resources, to administer the NPDES program for CAFOs, consistent with the Clean Water Act and federal requirements for authorized state NPDES programs. Our decision will also be based on comments that EPA has received on the proposal.

ORC 903.05 Application for a permit to install or permit to operate.

(A) Each application for a permit to install or permit to operate a concentrated animal feeding facility that is submitted by an applicant who has not owned or operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the applicant or any person identified by the applicant under division (C)(1) of section [903.02](#) or [903.03](#) of the Revised Code owns, has owned, has operated, or is operating in this state;

(2) A listing of the animal feeding facilities that the applicant or any person identified by the applicant under division (C)(1) of section [903.02](#) or [903.03](#) of the Revised Code owns, has owned, has operated, or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the animal feeding facilities that the applicant or any such person owns, has owned, has operated, or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the applicant or any person identified by the applicant under division (C)(1) of section [903.02](#) or [903.03](#) of the Revised Code, all civil actions in which the applicant or any such person was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the applicant or any such person pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section [6109.01](#) of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating outside the United States.

The lists of animal feeding facilities owned or operated by the applicant or any person identified by the applicant under division (C)(1) of section [903.02](#) or [903.03](#) of the Revised Code within or outside this state or outside the United States shall include, respectively, all such facilities owned or operated by the applicant or any such person during the five-year period immediately preceding the submission of the application.

(B) If the applicant for a permit to install or permit to operate or any person identified by the applicant under division (C)(1) of section [903.02](#) or [903.03](#) of the Revised Code has been involved in any prior activity involving the operation of an animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and any such person, in the operation of animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section [6109.01](#) of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant or any such person lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(C) A person who seeks to acquire or operate a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the

director of agriculture, a permit to install, or a permit to operate shall submit to the director the information specified in divisions (A)(1) to (3) of this section prior to the transfer of the permit. The permit shall not be transferred as otherwise provided in division (I) of section 903.09 of the Revised Code if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(D) An owner or operator of a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to operate shall submit to the director notice of any proposed change in the persons identified to the director under division (C)(1) of section 903.02 or 903.03 of the Revised Code, as applicable. The director may deny approval of the proposed change if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the proposed person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

Amended by 128th General Assembly File No.12, HB 363, §1, eff. 12/22/2009 and operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

Effective Date: 03-15-2001; 09-29-2005

60-Page Attachment E to Addendum #5

Index to page # and description.

Page	Description
1	Ohio EPA Point Source Categories
2	Federal Statute
3-7	Rule Summary and Fiscal Analysis
8	Farm Science Review
9	OEPA Draft Interim
10-11	OEPA (b) (6) Farm, Inc. Permit to Install
12-13	ODA letter to (b) (6) Poultry Farm
14-15	6th Circuit Court of Appeals Case 15-3147 Doc. 21 5-26-15
16	Letter to Vickie Askins from OEPA June 17,2010
17	MOA between OEPA and ODA 2002
18	ORC 6111.44-6111.46 S.B. 141
19	6th Circuit Court Case 3:14-cv-01699-DAK 10-20-14
20-21	ORC 6111.03
22	US EPA vs Summit Ethanol
23	US EPA-Federal Register
24-25	2nd Circuit Court Waterkeepers Alliance, Inc. 2004
26	Ohio CAFO Program
27-28	MOA between OEPA and ODA 2002
29-30	6th Circuit Court Case 3:14-cv-01699-DAK 10-20-14
31	Ohio Statute EP-30 OEPA Permit to Install
32-33	OAC Statute OEPA Permit to Install
34-35	Public Law 92-500 Amend The Federal Water Pollution Control Act 1972
36-43	Baldwins Ohio Revised Code Section 903.02,903.03 and 903.08
44-55	Lawriter ORC 903.02,903.03,903.08 and 903.10
56-60	Lawriter OAC 901:10-2-02 and 901:10-2-07



NPDES general permits currently available

Answer ID 180 | This answer was first published on: 11/29/2005 12:36 PM | This answer was last updated on: 03/04/2010 02:40 PM

What type of general NPDES permits are currently available?

General NPDES permits have been issued by Ohio EPA and are available for the following categories:

- Coal Surface Mining Activities
- Concentrated Animal Feeding Operations (CAFOs)
- Construction Site Storm Water
- Construction Site Storm Water in the Big Darby Creek Watershed
- Construction Site Storm Water in the Olentangy River Watershed
- Household Sewage Treatment Systems
- Hydrostatic Test Water
- Industrial Storm Water
- Non-contact Cooling Water
- Petroleum Bulk Storage Facilities
- Petroleum-related Corrective Actions
- Small MS4 Storm Water
- Small Sanitary Discharges
- Small Sanitary Discharges That Cannot Meet BADCT Standards
- Storm Water Discharges Associated with Industrial Activity From Marinas
- Temporary Wastewater Discharges
- Water Treatment Plants

Over the next several years, a number of other categories of discharges will be addressed by general permits, giving dischargers the opportunity to choose between an individual or general permit. These potential categories include water treatment plant discharges, industrial mineral mining activity discharges (including sand and gravel operations) and discharges from landfills. For more information and to download permits, visit the [Division of Surface Water's Web page](#).

40 CFR 123.62 - Procedures for revision of State programs.

CFR (/cfr/text/40/123.62?qt-cfr_tabs=0#qt-cfr_tabs)

Updates (/cfr/text/40/123.62?qt-cfr_tabs=1#qt-cfr_tabs)

Authorities (U.S. Code) (/cfr/text/40/123.62?qt-cfr_tabs=2#qt-cfr_tabs)

prev (/cfr/text/40/123.61) | next (/cfr/text/40/123.63)

§ 123.62 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities. Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 (/cfr/text/40/123) extending to those lands.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the *Federal Register* and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator will approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501 (/cfr/text/40/501)) and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the *Federal Register*. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) (/cfr/text/40/123.22#b) (or, in the case of a sewage sludge management program, § 501.12(b) (/cfr/text/40/501.12#b) of this chapter) must be revised and resubmitted.

Rule Summary and Fiscal Analysis (Part A)**Department of Agriculture**

Agency Name

Livestock Environmental Permitting

Division

David E Miran

Contact

**8995 East Main Street Reynoldsburg OH
43068-0000**

Agency Mailing Address (Plus Zip)

614-728-6390

Phone

Fax

david.miran@agri.ohio.gov

Email

901:10-1-01

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Definitions.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? Yes
2. Are you proposing this rule as a result of recent legislation? No
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: 119.03
4. Statute(s) authorizing agency to adopt the rule: 903.08, 903.10
5. Statute(s) the rule, as filed, amplifies or implements: 903.01, 903.02, 903.03, 903.04, 903.05, 903.07, 903.08, 903.081, 903.082, 903.09, 903.10
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:
The rules in this package are being filed in accordance with the five year rule review process.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE,

then summarize the content of the rule:

OAC 901:10-1-01 outlines the definitions as used in Division 901:10 of the Ohio Administrative Code. The rule is being amended to add a definition for the term #professional geologist.# The term has been defined as a person qualified to practice geology and is presently registered by a state licensing or certification board as recognized by the American Institute of Professional Geologists.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This rule incorporates Ohio Revised Code and/or Federal Code sections in the rule which are exempted from the incorporation by reference standards in section 121.75 of the Revised Code.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date: 2/17/2017

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this

rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Each CAFO/CAFF must obtain either a permit to install, or a permit to operate, and other permits depending on the location and size of the facility. The fees for these permits can be found in OAC 10-1-04 and vary from \$500 to \$2,250. All manure storage structures at the applicant's property must be built in compliance with the standards set forth in rule. The Department's engineers and inspectors review and inspect these facilities to ensure compliance. In addition, depending on the location of the facility the applicant may need to conduct water testing in order to determine the ground water quality characteristics. These tests are done to determine the soil and water characteristics of the site in order to provide the applicant the information necessary to most efficiently plan the facility's manure storage locations and operations. The cost of the plans required by these rules varies widely based on the location of the facility, the size of the facility, and if an independent contractor is selected to complete these plans.

16. Does this rule have a fiscal effect on school districts, counties, townships, or

municipal corporations? No

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? Yes

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? Yes

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

Each CAFO/CAFF must obtain either a permit to install, or a permit to operate, and other permits depending on the location and size of the facility.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes

Failure to comply with the rules may subject permit holders to fines or other enforcement actions. Additionally, failure to obtain a permit may be subject to heavy civil penalties and possible criminal actions.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? No

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?
Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? Yes

What is the rationale for not incorporating the federal counterpart?

The federal counterpart has been incorporated into the rule.

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? Yes

Please explain why?

To comply with the federal regulations for NPDES delegation.

The committee met again Sept. 24, and with three meetings scheduled during October, the current timeline is to have the regulatory structure completed by November to take effect in February of 2002.

The 16-member advisory committee is composed of nominated representatives of the various interests with a stake in the process, including producer groups, local officials, wastewater and drinking water utilities, environmental organizations, and four representatives of the public who were nominated by the Licking County citizens group, the Ohio Farmers Union, the Ohio Livestock Coalition, and the Ohio Federation of Soil and Water Conservation Districts.

At the charge of the governor, the group has worked to achieve consensus on each and every guideline included in the proposed regulations, Elder said.

Waiting for permits. There are a total of 130 feeding operations with 1,000 or more animal units around the state permitted under the former Ohio Environmental Protection Agency process. These operations will be inspected immediately in order to receive the new Department of Agriculture's permit to operate.

There are also a number of operations that have been waiting to expand until the new process is ready before they apply for an initial review to receive a permit to install.

In the end, Elder said the total number of feeding operations that will come under the jurisdiction of the permitting program under current federal rules will be around 200.

Once a facility has been permitted, Elder said, it will then be inspected twice a year.

The regulations being written are based on best management practices taken from the Soil and Water Conservation District standards, from the Environmental Protection Agency requirements, and from best scientific evidence, Elder said.

Create minimums. The advisory committee has tried to determine what would be the minimum standard consistent with good conservation, environmental protection, and federal requirements.

9

NUMBER: DSW 0400.025
ISSUED:
EXPIRES:
STATUS: DRAFT INTERIM
(12/10/95)
DIVISION: Surface Water
PAGE: 1 of 17

LIVESTOCK WASTE AND WASTEWATER MANAGEMENT

Purpose:

The purpose of this policy is to establish procedures and guidelines for regulating new livestock operations designed to handle waste from over 1,000 animal units or operations that are expanding to handle waste from a total of over 1,000 animal units. This policy also applies to existing facilities (of greater than 1,000 animal units) that are not complying with current requirements (e.g. facilities that failed to apply for a Permit to Install). This policy establishes procedures regulated entities must follow to obtain approvals and the criteria for the design and management of livestock waste and wastewater management systems.

Additionally, this policy is being issued as an interim policy to be effective for a period of two years. The intent of issuing this policy as interim is to allow the agency to develop a standard for review of livestock operations while more in depth studies are being performed on various livestock management issues. A commission of officials involved in livestock waste management from the tri-state area (Michigan, Indiana and Ohio) as well as members from various state and local agencies has been organized to perform these studies.

Applicable Regulations:

ORC 6111.44, ORC 6111.45, ORC 6111.46
OAC 3745-31, OAC 3745-33

Background:

The Ohio EPA regulates the storage, collection, treatment and disposal of manure and wastewaters from new or expanding livestock operations handling more than 1,000 animal units by requiring the submission of an application for a Permit to Install (PTI), a Livestock Waste Management Plan and, if applicable, a NPDES Permit. The requirements of the U.S.EPA NPDES Permit rules for concentrated animal feeding operations (40 CFR 412) must be met.

Ohio EPA will review all information available on the design capacity of a particular facility, including the dimensions and type of the planned waste treatment system, the size of the barn(s) for housing the animals, and the dimensions of the property where the facility will be developed. The Agency will also consider the proposed number of animal units, but will focus on the current design capacity of the planned or proposed waste treatment system in making the final decision to require a permit to install and plan approval.

Ohio EPA will not require a permit to install for a treatment works or disposal system for



Ohio Environmental Protection Agency

Permit to Install/Plan Approval Application Livestock Waste

Applicant: (b) (6) Farm, Inc.Facility Owner: (b) (6) Farm, Inc.Application/Plans Prepared by: Engineering Associates, Inc.Project Name: (b) (6) Farm, Inc. Wastewater Flush System

FOR AGENCY USE ONLY

Application Number

Date Submitted

1. Animal amounts:

Number	Type of Animal
(b)(6) animal units	Mature Dairy Cattle

2. Projected annual dry tons of manure (attach calculations) =

$$(b)(6) \text{ animal units} \times 10.4 \text{ lb/day/animal unit} \times 365 \frac{\text{days}}{\text{year}} \times \frac{1 \text{ ton}}{2,000 \text{ lb.}} = 3,796 \text{ dry tons/year}$$

3. Brief description of the existing manure collection, storage, and treatment process:

The existing manure storage and collection system consists of scraping manure into two concrete pits with a tractor for the mature dairy cattle and scraping manure onto a concrete pad with a tractor for the heifer barns.

4. Brief description of the proposed manure collection, storage, and treatment process:

The proposed manure collection system will be a flush system. Sand, which is used for bedding will be removed by gravity settling before the manure-water mixture is pumped into a 2-cell lagoon system for the treatment. Water from the lagoon system will then be used to flush the barns.

5. Manure/Wastewater Disposal Method (check the type that applies and provide a brief description)

☒ Land Application irrigation and truck-mounted spreaders☐ Distribution & Marketing _____☐ Other _____

If manure/wastewaters are to be land applied on known fields, complete the following table (attach additional sheets if needed):

Waste Type/Source	Site Name or #	County	Township	Application Rate
*See attached sheet				

JUL 7 1998



Ohio Environmental Protection Agency

Permit to Install/Plan Approval Application

FOR AGENCY USE ONLY

Date Received: 7-7-98 Application Number: 08016NW Basin Code: _____
Check Date: 7-1-98 Check Number: 712 Check Amount: 1565.00

1. Project Name:

(b) (6) Farm, Inc. Wastewater Flush System

2. Applicant:

Name: (b) (6) Farm, Inc.

Mailing Address: (b) (6)

City: Perrysville State: Ohio Zip: 44864

Contact Name: (b) (6) Title: President

Phone: (b) (6) Fax: (b) (6)

3. Application/Plans Prepared by:

Name: Engineering Associates, Inc.

Mailing Address: 700 Winkler Drive

City: Wooster State: Ohio Zip: 44691

Contact Name: (b) (6) Title: Principal

Phone: (b) (6) Fax: (b) (6)

4. Billing Address (if different than Applicant):

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Contact Name: _____ Title: _____

Phone: () - Fax: () -

5. Owner (if different than Applicant):

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Contact Name: _____ Title: _____

Phone: () - Fax: () -

6. Project Location:

Street Address or Location Description: (b) (6)

County: Ashland Township/Municipality: Green Township

Latitude: (b) (6) Longitude: (b) (6) Method of Determination: USGS map

JUL 7 1998



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Maureen O'Connor
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

Certified Mail Return Receipt Requested

February 10, 2004

(b) (6); Poultry Farm

(b) (6)

(b) (6)

Fort Recovery, Ohio 45846

Re: Warning Letter

Dear (b) (6):

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on November 26, 2003. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program investigated a complaint that tiles on your farm were flowing and that you had a discharge from land applying egg wash water to a field. I understand that your lagoon was getting full and that you found it necessary to land apply manure. No records were available on freeboard measurements.

The inspection noted that the lagoon was approximately $\frac{3}{4}$ empty. The tile was plugged and the waterway was dammed. There was a trace of red left in the ditch from the egg wash water, but it was mostly clear. The discharge was taken care of but a discharge occurred. It appeared to the inspector that the discharge flowed into a defined waterway or "waters of the State" in violation of your Ohio EPA Permit to Install, which is now enforced by this Department.

The following are the rules at issue:

Rule 901:10-2-14 of the Ohio Administrative Code provides, in part, at (B) Manure application rate — general criteria:

"(3) The manure application rate shall be based on the most limiting factor of the following:

"(a) For liquid manure:

* * * * *

"(iv) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule. ..."

You are currently subject to Ohio EPA Permit to Install 08-044-NW which was transferred to this Department for enforcement on August 19, 2001. As required by law, you are working to obtain a Review Compliance Certificate that will regulate your farm under ODA rules and under those portions of the Ohio EPA permit that do not conflict with any ODA rules. Some of the conditions of the Ohio EPA permit required monitoring and reporting. With the RCC you will find that ODA rules also require monitoring and recordkeeping. Records need to be maintained in good order in an Operating Record that is always available to an inspector. I want to take this opportunity to note the requirements that apply with respect to land application activities at a facility such as yours. The applicable rule is 901:10-2-16 of the OAC and it provides, in part at paragraph (A)(1)(c):

"Land application site records. Records for each land application site, including:

* * * * *

"(iii) When liquid manure is applied to a land application site with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

"(iv) When liquid manure is applied to a land application site with subsurface drain, document the use of drain outlet plugs or other devices in the operating record."

A copy of Appendix B, which is referred to in the rules, is included here for your use along with a copy of the Complaint Follow-Up Report.

You must contact this office prior to any land application of manure because of winter conditions. In the meantime, my staff will continue to work with you to develop a Review Compliance Certificate for your facility.

Sincerely,



Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Enclosures (2)

Cc: Andy Ety, LEPP Engineer
Michelle McKay, LEPP Inspector
Jennifer Tiell, Legal Counsel
John L. Shailer, Assistant Attorney General
Mercer County SWCD
Rick Wilson, Ohio EPA

ODA submitted a program to the U.S. EPA that complied with federal requirements and approval is obtained from the U.S. EPA. Ohio Rev. Code § 903.08(A). The General Assembly conditioned the transfer and ODA's authority to administer the NPDES program on or after the date the U.S. EPA approved the program. Ohio Rev. Code § 903.08(B); *Elder Aff.* at ¶ 11, (R. 17-10), Page ID# 530.

The enactment of this comprehensive environmental statute to create a regulatory program for CAFFs and CAFOs administered by ODA is an example of the State of Ohio exercising its power and authority to adopt and enforce statewide requirements to control water pollution within the State as recognized under the Clean Water Act and federal regulations.

3. There is no federal equivalent to ODA's PTI and PTO program under the Clean Water Act.

ODA's State permit program is not subject to the requirements of Clean Water Act or federal NPDES regulations because no PTI or PTO program exists under the Act. *Elder Aff.* at ¶10, (R. 17-10), Page ID# 530; *see also* 33 U.S.C. § 1342(b), 40 C.F.R. Part 123. ODA's PTIs and PTOs are not federally enforceable under the Act's § 402 NPDES permitting scheme because PTIs and PTOs do not regulate actual point source discharges of pollutants from CAFOs. *Id.* at ¶¶8-9, (R.17-10), Page ID# 529.

Also, the Clean Water Act does not regulate the design, construction,

operation, or maintenance of CAFOs. Rather, it regulates actual pollutant discharges from CAFOs. *Nat'l Pork Producers Council v. U.S. EPA*, 635 F.3d 738, 750-751, (2011). Any attempt to regulate the construction or operation of a CAFO with an NPDES permit is *ultra vires* and beyond the regulatory scope of the NPDES program. *Id.* at 751.⁵

Since 2002, ODA has issued approximately 139 PTIs and 387 PTOs and PTO renewals to CAFFs as authorized by Ohio Rev.Code Chapter 903 and Ohio Adm. Code Chapter 901:10. *Elder Aff.* at ¶¶8-9, (R. 17-10), Page ID# 529-530. ODA has never issued an NPDES permit to a CAFF during its administration of the State program.

4. The Askins mistakenly conflate the different regulatory programs administered by Ohio EPA and ODA for livestock operations.

The Askins make several allegations regarding the manure management plans and permitting requirements of the Ohio EPA and ODA, which indicate that they may not understand how large livestock operations are regulated in the State of Ohio.

⁵ The 2008 federal CAFO Rule required CAFOs to apply for an NPDES permit if the CAFO discharged or "proposed to discharge". Under 40 C.F.R. § 122.23(d) (2012 version), the term "proposed to discharge" meant the CAFO was designed, constructed, operated, or maintained such that a discharge will occur."

In accordance with the decision in the *National Pork Producers* case, the U.S. EPA amended 40 C.F.R. §122.23(d), which currently states as follows: (d) *NPDES permit authorization.*—(1) *Permit Requirement.* A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit.

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State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TEL: (614) 644-3020 FAX: (614) 644-3194
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

June 17, 2010

Vickie Askins

(b) (6)

Cygnet, Ohio 43413

Re: Dekker Jersey Dairy Manure Fields in Water Source Protection Areas

Dear Vickie,

I am writing in response to your letter of June 2, 2010; regarding the proposed (b) (6) Jersey Dairy. As you are aware, Ohio EPA is not the regulatory agency responsible for issuing installation and operating permits for large Concentrated Animal Feeding Facilities (CAFFs). This duty was delegated to the Ohio Department of Agriculture by the Ohio House of Representatives and the Ohio Senate. Ohio EPA's current regulatory responsibility for Concentrated Animal Feeding Operations (CAFOs) is to issue National Pollutant Discharge Elimination System (NPDES) permits to CAFOs which discharge or propose to discharge pollutants.

Ohio EPA does not have rules regarding land application restrictions for manure produced and land-applied by CAFOs. The land application restrictions you have referenced are permit conditions in CAFO NPDES permits. These permit conditions are not enforceable outside of an effective CAFO NPDES permit.

We do not have an application pending for a CAFO NPDES permit for this facility. In addition, on June 3, 2010, a complaint for judicial foreclosure of the (b) (6) Jersey Dairy Leasing, LLC properties in Wood County was filed in the United States District Court Northern District of Ohio Western Division.

In light of this judicial foreclosure complaint, Ohio EPA's limited regulatory authority for CAFOs, and Ohio EPA's resources, I do not believe that an Ohio EPA review of the (b) (6) Jersey Dairy Manure Management Plan (MMP) is either practical or necessary at this time. If the situation changes and the dairy is constructed and discharges or proposes to discharge, then Ohio EPA would be more than willing to conduct that review.

If you have questions regarding the Source Water Assessment and Protection Program administered by Ohio EPA's Division of Drinking and Ground Waters, your questions can be answered more quickly by directly contacting Michael Egger at 614-644-2767 or at michael.egger@epa.state.oh.us.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korlaski, Director



by taking timely and appropriate actions in accordance with the CWA and applicable state law (Chapter 903. of the Revised Code).

OEPA is responsible for and has the legal authority to administer NPDES requirements for permitting, for compliance evaluations, and for enforcement authority with respect to all other NPDES permits in Ohio, including the pretreatment program and the sewage sludge program.

OEPA is responsible for processing new, modified, and renewed NPDES permits for non-domestic wastewater discharges, including industrial, commercial, and silviculture. OEPA is responsible for processing new, modified, and renewed NPDES permits for domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works.

OEPA is responsible for sewage sludge management, including use, processing and disposal of sewage sludge.

OEPA will remain responsible for stormwater discharges regulated under the NPDES program, including municipal separate storm sewer systems and stormwater associated with industrial activity, except discharge, transport, or handling of stormwater from CAFFs or CAFOs as regulated by ODA. OEPA will remain responsible for an enforcement program for unauthorized discharges from all but animal feeding facilities in its regulatory program. OEPA shall take timely and appropriate actions in accordance with the CWA and applicable state laws (Chapters 3745 and 6111 of the Revised Code) and the NPDES enforcement management system developed by OEPA for OEPA's use.

plans for the disposal of the waste have been submitted to and approved by the director of environmental protection. As used in sections 6111.44 to 6111.46 of the Revised Code, "industrial waste" means sludge or sludge materials or a water-carried or liquid waste resulting from any process of industry, manufacture, trade, or business or development of any natural resource, BUT DOES NOT INCLUDE STORM WATER FROM ANY ANIMAL FEEDING FACILITY, AS DEFINED IN SECTION 903.01 OF THE REVISED CODE, OR MANURE, AS DEFINED IN THAT SECTION. In granting an approval, the agency may stipulate modifications, conditions, and rules that the public health and welfare may require. Any action taken by the director shall be a matter of public record and shall be entered in the director's journal. Each period of thirty days that a violation of this section continues, after a conviction of the violation, constitutes a separate offense.

SECTION 2. That existing sections 1511.02, 1511.021, 1511.022, 1511.07, 1511.071, 1515.08, 3745.04, 6111.03, 6111.035, 6111.04, 6111.44 and 6111.45 of the Revised Code are hereby repealed.

SECTION 3. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the General Revenue Fund and the State Special Revenue Fund Group. For all appropriations made in this act, those in the first column are for fiscal year 2000 and those in the second column are for fiscal year 2001. The appropriations made in this act are in addition to any other appropriations made for the 1999-2001 biennium.

AGR. DEPARTMENT OF AGRICULTURE

General Revenue Fund

GRF 700-414 Concentrated Animal Feeding Facility Advisory Committee	\$	0	\$	25,000
GRF 700-418 Livestock Regulation Program	\$	0	\$	1,700,000
TOTAL GRF General Revenue Fund	\$	0	\$	1,725,000
State Special Revenue Fund Group				
5LB 700-604 Livestock Management Fund	\$	0	\$	250,000
TOTAL SSR State Special Revenue Fund Group	\$	0	\$	250,000
TOTAL ALL BUDGET FUND GROUPS	\$	0	\$	1,975,000

Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in

2.0 State Program

2.1 Description of State Responsibilities

Basic authority for water pollution control in Ohio is Ohio Revised Code Chapter 6111, as amended. Chapter 6111 was amended in 1972 and again in 1973 to institute a discharge permit system compatible with the National Pollutant Discharge Elimination System (NPDES) initiated by the 92nd Federal Congress through the enactment of the Federal Water Pollution Control Act of 1972 (PL 92-500) for all persons discharging wastes into the surface or ground waters of the state, or onto the ground.

Ohio Revised Code Section 6111.04 now provides that no person shall place any pollutant, i.e., sewage, industrial waste, or other waste, into any waters of the state, or place such matter in a location where it causes such pollution, unless he holds a valid and unexpired permit from the Ohio Environmental Protection Agency (Ohio EPA) or unless an application for renewal is pending.

Revised Code Section 6111.03 (J) further provides that all discharge permits issued by the Ohio EPA must comply with all requirements of the Federal Water Pollution Control Act of 1972 and regulations adopted thereunder. In addition, no permit shall be issued if the Administrator of the U.S. EPA objects in writing to the issuance, if the Secretary of the Army determines in writing that anchorage or navigation would be substantially impaired by the proposed discharge, or if a discharge of radiological chemical, biological warfare agent or high-level radioactive waste is proposed. All persons discharging or proposing to discharge sewage, industrial waste, or other waste into surface waters of the state will be issued a discharge permit pursuant to PL 92-500, Chapter 6111, and the procedural and substantive rules of the Ohio EPA. Persons injecting into wells any substance that may pollute waters of the state must apply to the Ohio EPA for an NPDES permit. In addition, persons injecting water, gas, or other material into a well to facilitate the production of oil or gas or for disposal purposes must obtain a permit from the Ohio Department of Natural Resources in compliance with Ohio Revised Code Section 1509.081.

NPDES permits issued by the Ohio EPA for all discharges will contain appropriate effluent limitations and restrictions and schedules of compliance, and other conditions deemed necessary by the Ohio EPA to give adequate protection to waters of the state. No permit will be valid for more than five years. Monitoring and other reporting requirements will be included in the permit whenever necessary. Mixing zones are already provided in the Ohio Water Quality Standards, EP-1. (Appendix 3.4)

The Ohio EPA and the U.S. EPA, Region V, have arrived at a Memorandum of Agreement, which outlines the procedures by which Ohio will implement the 40 CFR 124 guidelines of U.S. EPA. This Memorandum will be signed by the Director of the Ohio EPA and constitutes an official part of this program submittal. The Agreement contains the following procedures which the Ohio EPA will pursue as part of its implementation of the NPDES permit program:

(G) Adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, the filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates, and all other matters relating to procedure;

(H) Issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as the following:

(1) Prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state;

(2) Requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof;

(3) Prohibiting additional connections to or extensions of a sewerage system when the connections or extensions would result in an increase in the polluting properties of the effluent from the system when discharged into any waters of the state;

(4) Requiring compliance with any standard or rule adopted under sections 6111.01 to 6111.05 of the Revised Code or term or condition of a permit.

In the making of those orders, wherever compliance with a rule adopted under section 6111.042 of the Revised Code is not involved, consistent with the Federal Water Pollution Control Act, the director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of this chapter.

(I) Review plans, specifications, or other data relative to disposal systems or any part thereof in connection with the issuance of orders, permits, and industrial water pollution control certificates under this chapter;

(J)(1) Issue, revoke, modify, or deny sludge management permits and permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation or modification of disposal systems or any parts thereof in compliance with all requirements of the Federal Water Pollution Control Act and mandatory regulations adopted thereunder, including regulations adopted under section 405 of the Federal Water Pollution Control Act, and set terms and conditions of permits, including schedules of compliance, where necessary. In issuing permits for sludge management, the director shall not allow the placement of sewage sludge on frozen ground in conflict with rules adopted under this chapter. Any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the installation or modification of a disposal system involving pollutants or storm water or any parts of such a system on and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code. In addition, any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the discharge of storm water from an animal feeding facility or pollutants from a concentrated animal feeding operation on and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code.

Any permit terms and conditions set by the director shall be designed to achieve and maintain full compliance with the national effluent limitations, national

standards of effluent standards that are environmental; also applies to other wastes and issue one

A sludge management sewage sludge

(a) The

(b) Prior

sewage sludge

under section

waste in a

(c) Disposal

rules adopted

As used

landfill facilities

Code, that

Code.

(2) An application following application

(a) The

tion would

(b) The

with an area

section 208

(c) The

objects in

section 402

(d) The

biological

United States

(3) To achieve

state adopted

impose, where

related effluent

of the Federal

shall give consideration

technical feasibility

ties from those

that action

accomplishment

(4) Where

constructed or

limitations on

compliance with

limitations on

indigenous populations

which the director

component will

impose any restriction

damages resulting from oil spill in navigable waters of state. 10 ALRFed 956.

Validity and construction of statute or ordinance allowing tax exemption for property used in pollution control. 65 ALR3d 434.

Law Review

Beyond the cabin on the bank, Ohio groundwater law in transition. Comment. 13 ONorthLRev 537 (1986).

Environmental law—assessment of penalties for violations of schedules of compliance prescribed by a national pollution discharge elimination system permit. A corporation's size and wealth are admissible and relevant for determining the amount of a penalty for violating a schedule of compliance. *State ex rel. Brown v. Dayton Malleable, Inc.*, 1 OS3d 151, 438 NE2d 120 (1982). Case note. 12 CapitalULRev 335 (1982).

Groundwater law in Ohio past and future: a proposed legislative solution to past problems and future needs. Richard P. Fahey and Stefania Debow-Hubbard. 14 CapitalULRev 43 (1984).

CASE NOTES AND OAC

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1. (1990) In order for claims brought by the state of Ohio pursuant to Ohio's water pollution laws to fall within the waiver of sovereign immunity, those claims must arise under federal law. Because Ohio's water pollution laws were adopted in accordance with the Clean Water Act and approved by the EPA, Ohio state law claims also arise under the federal law and thus the Clean Water Act's waiver of sovereign immunity also applies to state pollution law claims: *State of Ohio v. U.S. Dept. of Energy*, 904 F2d 1038 (6th Cir.).

2. (1988) Because compliance with a state permit is deemed compliance with the Clean Water Act, 33 USC § 1251 et seq. and, under the circumstances, the civil penalties imposed under the state program "arise under Federal law," Congress intended to waive sovereign immunity to such civil penalties, and because the State of Ohio has pleaded federal violation of the Ohio Water Pollution Control Act with particularity, therefore the State of Ohio may recover if it can prove facts supporting its claims: *State of Ohio v. United States Department of Energy*, 689 FSupp 760 (S.D.).

3. (1992) The public hearing requirement to which Ohio Adm. Code 3745-1-05 refers must be satisfied before a permit may be issued to install a new source of pollution pursuant to Ohio Adm. Code 3745-31-02(A): *Columbus &*

Franklin Cty. Metro. Park Dist. v. Shank, 65 OS3d 86, 600 NE2d 1042.

4. (1982) Schedules of compliance are terms or conditions of National Pollutant Discharge Elimination System permits issued by the Director of Environmental Protection: *State ex rel. Brown v. Dayton Malleable*, 1 OS3d 151, 1 OBR 185, 438 NE2d 120.

5. (1992) Contrary to the requirements of RC § 3745.05, the environmental board of review's findings of fact did not support its affirmation of the prior notice and prior approval conditions in the discharge permit: *CECOS Internatl., Inc. v. Shank*, 79 OApp3d 1, 606 NE2d 973.

6. (1985) Revised Code § 6111.03(Q)(3) authorizes the Director of Environmental Protection to incorporate publicly owned treatment works ("POTW") pretreatment program conditions into permits issued to POTWs. In addition, RC § 6111.03(Q)(7) authorizes the director to issue orders to enforce POTW pretreatment programs: *Sandusky v. Maynard*, 27 OApp3d 109, 27 OBR 140, 499 NE2d 1262.

7. (1985) When it is not practical, the Director of Environmental Protection is not required to hold a hearing prior to issuing an order requiring a POTW to develop a program for the pretreatment of industrial waters prior to their discharge into the POTW (*General Motors v. McAvoy* [1980], 63 OS2d 232 [17 OO3d 143], paragraph two of the syllabus, applied): *Sandusky v. Maynard*, 27 OApp3d 109, 27 OBR 140, 499 NE2d 1262.

8. (1980) The director is not required to afford an adjudicatory hearing to a permittee before issuing the permit. Although RC § 6111.03(J) requires the director to base his determination on certain evidence, an adjudicatory hearing is not mandatory since the director may obtain the necessary evidence by investigation or in some other way: *Amherst v. McAvoy*, 19 OO3d 321 (App).

9. (1980) A municipality has a right, under Art. XVIII, § 4 of the Ohio Constitution, to own and operate its own sewage treatment facility. Thus, the director of environmental protection may not order a municipality to contract with another municipality for such facilities. The director may, however, order a municipality to modify its existing facilities or to construct new facilities in order to comply with reasonable environmental protection standards: *Amherst v. McAvoy*, 19 OO3d 321 (App).

10. (1979) Where it is claimed that a municipal ordinance requiring annexation prior to use of municipal utilities conflicts with the state's policy to control water pollution on a statewide basis, irrespective of municipal boundaries, the determination whether such policy and such conflict exist must be predicated upon action initiated by the Ohio Environmental Protection Agency, and not by a third party: *Shipman v. Bd. of Health*, 64 OApp2d 228, 18 OO3d 172, 414 NE2d 430.

11. (1974) The Ohio environmental protection agency may not make approval of an otherwise proper application for sewer line connections contingent upon the village improving its sewer system: *Monroe Country Estates, Inc. v. Whitman*, 74 OO2d 176 (EBR 73-29).

12. (1974) The broad and general authority granted to the director under RC § 6111.44 to "... stipulate such modifications, conditions, and regulations as the public health and prevention of pollution may require" has been limited by the enactment of RC § 6111.03(H)(3) and its clear and explicit language granting authority to the director to prohibit "connections to or extensions of a sewerage system" when such "connections or extensions would result in an increase in the polluting properties of any waters of

the State": *Monroe Country Estates, Inc. v. Whitman*, 74 OO2d 176 (EBR 73-29).

13. (1988) A facility for the compliance with state law governing solid waste disposal (other than wastes), and water pollution or township zoning provisions by Chapter 3734., or RC Chapter 6111.

14. (1987) A board of county itself of the responsibility for and maintenance of a county, pursuant to RC Chapter 6111, inconsistent with preservation of health and welfare, and provided result in violation of the statutory regulations governing sewer district, such as RC Chapter 6111.

15. (1971) State monies can share in a state-sponsored federal and may consequently be used private lands with the concurrence pursuant to such project: OAC 6111.03-1-05.

16. (1971) A local watershed political subdivision cannot administer a state-federal project within its district: OAC No. 6111.03-1-05.

17. (1971) If a local political subdivision carries out corrective measures private land which does not affect the problem, they cannot be interested: OAC No. 6111.03-1-05.

[§ 6111.03.1] § may modify terms of permit.

(A) The director of environmental protection, where consistent with the "Pollution Control Act," may modify terms of a permit or issue a permit variance from a national effluent standard section 301 of the "Pollution Control Act" upon application July 1, 1977, and a showing that such modified terms will require the maximum use of the economic capability of and (2) will result in reversion toward the elimination of the industrial waste, and other of the state.

(B) The director may, after a public hearing in accordance with the Revised Code, issue a permit variance from a national effluent standard for the thermal contribution upon a showing satisfactory to the director that such limitation is more stringent than protection and propagation of the population of shellfish and on the body of water in which it is made or is to be made. The director shall impose a limitation on the permit, as a condition of the permit.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	EPA-5-14-113(a)-OH-5
)	
Summit Ethanol, LLC d/b/a)	Proceeding Under Sections 113(a)(3)
POET Biorefining - Leipsic)	of the Clean Air Act, 42 U.S.C.
Leipsic, Ohio)	§ 7413(a)(3)
)	
)	

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Summit Ethanol, LLC, doing business as POET Biorefining - Leipsic (POET), under Section 113(a)(3) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3).

Statutory and Regulatory Background

Federally Enforceable State Operating Permit Program

2. On March 10, 2003, EPA approved Ohio Administrative Code (OAC) Rule 3745-31-05 as part of the federally-enforceable Ohio State Implementation Plan (Ohio SIP). 68 Fed. Reg. 29009.

3. OAC Rule 3734-31-05 authorizes the Ohio Environmental Protection Agency (Ohio EPA) to issue federally-enforceable Permits-to-Install (PTI) and Permits-to-Install and Operate (PTIO) with such terms and conditions as are necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

Title V Permit Program

4. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution.

... On January 22, 2003, EPA approved OAC 3 745-3 1-05 as part of the federally enforceable SIP for Ohio. 68 Fed. Reg. 2909. ... 68 Fed. Reg. 2909. ...

CERTIFIED MAIL RETURN RECEIPT REQUESTED Monica ... 2010-02-02
<https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cf1f586257576006fb461/4...>
 ... 68 Fed. Reg. ... 59 Fed. Reg. ... This Order does not affect the University of Cincinnati's responsibility to comply with other federal, state, and local laws. ...
 [More results from <https://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cf1f586257576006fb461>]

Federal Facilities Reports About Underground Storage Tank Compliance - 2005 Energy Policy Act

<https://www.epa.gov/ust/federal-facilities-reports-about-underground-sto...>
 Find links to reports from 24 federal agencies regarding the compliance status of underground storage tanks owned or operated by the federal agencies or located on land managed by the federal agencies.

Registering Transformers Containing Polychlorinated Biphenyls (PCBs)

<https://www.epa.gov/pcbs/registering-transformers-containing-polychlorin...>
 PCB transformer owners must register their transformer(s) with EPA. This page contains the forms and instructions on how to do so.

5 Year Air Monitoring Assessment

2016-05-11

<https://www3.epa.gov/ttn/amtic/files/networkplans/FLassess2015.pdf>
 ... 68 Figure 43. ... CO Carbon Monoxide FRM Federal Reference Method ... NO2
 Nitrogen Dioxide NON-REG Non-regulatory Monitoring Holmes County ...

Ambient Air Monitoring Network for Florida

2015-08-28

<https://www3.epa.gov/ttn/amtic/files/networkplans/FL2012plan.pdf>
 ... FRM Federal Reference Method HI CONC High Concentration MET ... NON-REG
 Non-regulatory Monitoring PM2.5 Particulate ... 7.5 15 1 1 68 2 < 120 ...
 [More results from <https://www3.epa.gov/ttn/amtic/files>]

Consent Decree: SunCoke Energy, Inc. (SunCoke) and Haverhill North Coke Co. (Haverhill)

<https://www.epa.gov/enforcement/consent-decree-suncoke-energy-inc-suncok...>

This is the consent decree for SunCoke Energy, Inc. (SunCoke) and Haverhill North Coke Co. (Haverhill)

Consent Decree: United States of America, et al. v. Archer Daniels Midland Company

<https://www.epa.gov/enforcement/consent-decree-united-states-america-et-...>

Consent Decree with Archer Daniels Midland Company for violations of Clean Air Act

[More results from <https://www.epa.gov/enforcement>]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2004

(Argued: December 13, 2004 Decided: February 28, 2005)

Docket Nos. 03-4470 (L), 03-4621 (C), 03-4631 (C), 03-4641 (C), 03-4849 (C),
04-40199 (C), 03-40229 (C)

WATERKEEPER ALLIANCE, INC., AMERICAN FARM BUREAU FEDERATION, NATIONAL CHICKEN
COUNCIL, NATIONAL PORK PRODUCERS COUNCIL, AMERICAN LITTORAL SOCIETY, SIERRA CLUB,
INC., NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Petitioners/Intervenors,

—v.—

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, MICHAEL O. LEAVITT, Administrator,
United States Environmental Protection Agency

Respondents.

Before:

OAKES, KATZMANN, and WESLEY, *Circuit Judges.*

The petitioners challenge an administrative rule promulgated by the United States Environmental Protection Agency in order to regulate the emission of water pollutants by concentrated animal feeding operations. See National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 Fed. Reg. 7176, 7179 (Feb. 12, 2003) (codified at 40 C.F.R. Parts 9, 122, 123 and 412). The petitions for review are granted in part and denied in part.

1 application.” Land application, the predominant means by which CAFOs dispose of animal
 2 waste,¹¹ is a process by which manure, litter, and other process wastewaters are spread onto
 3 fields controlled by CAFOs. As all parties here agree, when properly land-applied, manure,
 4 litter, and other process wastewaters can act as a fertilizer, because “land application of CAFO
 5 waste fosters the reuse of the nitrogen, phosphorus, and potassium in these wastes for crop
 6 growth.” EPA, STATE COMPENDIUM: PROGRAMS AND REGULATORY ACTIVITIES RELATED TO
 7 ANIMAL FEEDING OPERATIONS 13 (May 2002). However, when waste is excessively or
 8 improperly land-applied, the nutrients contained in the waste become pollutants that can and
 9 often do run off into adjacent waterways or leach into soil and ground water. *See id.*; Preamble
 10 to the Final Rule at 7180-81.

11 In light of these environmental threats, the EPA first promulgated regulations for CAFOs
 12 in 1974 and 1976 – regulations that, very generally speaking, defined the types of animal feeding
 13 operations that qualify as CAFOs, set forth various NPDES permit requirements, and established
 14 effluent limitation guidelines for CAFOs. *See* 41 Fed. Reg. 11,458 (Mar. 18, 1976); 39 Fed. Reg.
 15 5704 (Feb. 14, 1974). After having been sued, in 1989, for failing to publish a plan to revise
 16 existing effluent limitations for the industry pursuant to 33 U.S.C. § 1314(m),¹² the EPA, on

¹¹“Several estimates indicate that 90% of CAFO-generated waste is land applied.” EPA, STATE COMPENDIUM: PROGRAMS AND REGULATORY ACTIVITIES RELATED TO ANIMAL FEEDING OPERATIONS 13 (May 2002).

¹² That suit, brought by the NRDC and Public Citizen, was resolved by a consent decree in which the EPA agreed to propose new effluent limitation guidelines for the swine, poultry, beef and dairy subcategories of CAFOs. *See* Consent Decree, as amended, *NRDC v. Reilly*, modified sub. nom., *NRDC v. Whitman*, No. 89-2980 (D.D.C. 1/31/1992).

Ohio's CAFO Program

1.0 Background

Based upon information provided to EPA by USDA, there are 532 AFOs with 300 to 1,000 animal units and 212 AFOs with more than 1,000 animal units in Ohio (USDA, 1999; USDA, 2000). Ohio has 130 facilities with more than 1,000 AU that have received installation permits and/or livestock waste management plans approval from Ohio EPA (Jones, Speck, Daily, 2000).

2.0 Lead Regulatory Agency

Senate Bill 141 transfers the authority to issue NPDES permits for the discharge of manure from point sources into waters of the state and for storm water resulting from an animal feeding facility (AFF) from the Director of Environmental Protection to the Director of Agriculture. The authority to issue these permits depends upon the approval of the Director of Agriculture's permit plan by the U.S. EPA. Authority to issue permits to construct or modify concentrated animal feeding facilities (CAFF) also was transferred to the Director of Agriculture (OLSC, 2002). The Division of Soil and Water Conservation, Ohio Department of Natural Resources, addresses pollution problems from operations with fewer than 1,000 animal units, which are not required to obtain permits (Hutchinson, 1996).

3.0 State Regulations Regarding AFOs/CAFOs

Ohio Revised Code (OR) 6111 prohibits the controlled discharge of waste directly into state waters (Veenhuizen et al., 2000). Ohio Revised Code 307.204 and 505.226 require written notification of new or expanding CAFF to local county and township boards, and an agreement regarding the CAFF operations between the CAFF and the county, and CAFF and the township before a permit is issued. Senate Bill 141 transfers the authority to regulate NPDES discharges to the Ohio Department of Agriculture and requires all farms with 1,000 AUs be regulated by permit and utilize Best Management Practices and Comprehensive Nutrient Management Plans. The program also requires plans for insect and rodent control (Jones et al., 2000). Livestock facilities are affected by Ohio's Stream Litter Act (ORC 1531.29), which specifies that any person putting wastes into Ohio's waters may be guilty of a violation (Hutchinson, 1996).

4.0 Types of Permits

Three types of Ohio EPA approvals may apply to an animal operation in: an NPDES permit, an installation permit (formerly a permit-to-install), and a livestock waste management plan. An animal operation may need to have more than one permit or management plan (Hutchinson, 1996).

NPDES

Currently there are potentially two types of NPDES permits that a livestock operator would need: an NPDES wastewater permit and an NPDES storm water permit.

Senate Bill 141 prohibits a person, on and after the date on which the U.S. EPA approves the NPDES program submitted by the Director of Agriculture, from discharging manure from a point source into waters of the state, or from discharging storm water resulting from an AFF, without first obtaining a NPDES permit issued by the Director of Agriculture. Persons who have been

Rev. 7/29/02

3002

MEMORANDUM OF AGREEMENT
BETWEEN
THE OHIO DEPARTMENT OF AGRICULTURE
AND
THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Article I. INTRODUCTION AND PURPOSE

This Memorandum of Agreement (MOA) is entered into between the Ohio Department of Agriculture (ODA) and the Ohio Environmental Protection Agency (OEPA) for the purpose of structuring a cooperative and complementary approach to the regulation of animal feeding facilities and the regulation of and protection of water quality in the State of Ohio. This MOA is intended to support the state of Ohio's application to the United States Environmental Protection Agency (USEPA) for amended delegation, under section 304(i) of the Federal Water Pollution Control Act as amended by the Clean Water Act Amendments of 1977, 32 U.S.C. section 1251 et seq., and referred to in this MOA as the Clean Water Act or CWA or Act.

This MOA is initiated and intended to benefit only the state of Ohio. The obligations of the state of Ohio under this MOA are subject to section 126.07 of the Revised Code and all other applicable Ohio Revised Code (Revised Code) provisions. Nothing in this MOA is intended to amend or alter any provision in the various components of formal NPDES program authorization and delegation as between the OEPA and USEPA for matters outside the scope of Revised Code Chapter 903.

The parties recognize the need to optimize the use of state resources with more efficient government and to ensure a coordinated state effort to regulate and control "manure" as that term is defined in Division (N) of Section 903.01 of the Revised Code. As such, the parties desire to establish procedures for cooperation and communication between the parties, optimizing the use

Rev. 7/29/02

MOA

by taking timely and appropriate actions in accordance with the CWA and applicable state law (Chapter 903. of the Revised Code).

OEPA is responsible for and has the legal authority to administer NPDES requirements for permitting, for compliance evaluations, and for enforcement authority with respect to all other NPDES permits in Ohio, including the pretreatment program and the sewage sludge program.

OEPA is responsible for processing new, modified, and renewed NPDES permits for non-domestic wastewater discharges, including industrial, commercial, and silviculture. OEPA is responsible for processing new, modified, and renewed NPDES permits for domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works.

OEPA is responsible for sewage sludge management, including use, processing and disposal of sewage sludge.

OEPA will remain responsible for stormwater discharges regulated under the NPDES program, including municipal separate storm sewer systems and stormwater associated with industrial activity, except discharge, transport, or handling of stormwater from CAFFs or CAFOs as regulated by ODA. OEPA will remain responsible for an enforcement program for unauthorized discharges from all but animal feeding facilities in its regulatory program. OEPA shall take timely and appropriate actions in accordance with the CWA and applicable state laws (Chapters 3745 and 6111 of the Revised Code) and the NPDES enforcement management system developed by OEPA for OEPA's use.

- a. Receipt and use of Federal data
- b. Transmission of data to U.S. EPA Regional Administrator
- c. Public access to information
- d. Draft permit objections
- e. Schedules of Compliance in issued NPDES permits
- f. Transmission to U.S. EPA Regional Administrator of proposed and issued NPDES permits
- g. Monitoring
- h. Modification, Suspension, and Revocation of NPDES permits.
- i. Enforcement
- j. Control of disposal of pollutants into wells

Ohio law authorizes the Ohio EPA to adopt regulations to carry out the functions and purposes of the law. The Director has adopted regulations entitled "Chapter EP-31, Ohio NPDES Discharge Permits", which set forth provisions governing NPDES discharge permits. These regulations will include:

1. A requirement that all persons discharging wastes into waters of the state shall apply for NPDES permits from the Ohio EPA
2. Exceptions
3. Criteria for issuing permits
4. Description of compliance schedules
5. Description of conditions that will be included in permits
6. Provisions for transfer, revocation, termination, and modification of permits

Procedures whereby permits are granted and denied, as well as appeal procedures, are set forth in Ohio Revised Code Chapter 119, the Administrative Procedure Act; in Chapter EP-40, Procedural Rules of the Ohio EPA; in O.R.C. Chapter 3745; and the Rules of the Environmental Board of Review.

In addition to the state responsibilities for the Ohio Wastewater Discharge Permit System described above, the Ohio EPA has submitted for approval by the U.S. EPA a continuing planning process and water quality standards, as required by Section 303 of PL 92-500.

The Ohio Attorney General has prepared an "Attorney General's Statement" as required by Section 402(b) of PL 92-500 outlining the authority of the State of Ohio to carry out the NPDES Wastewater Discharge Permit Program.

2.2 Organization and Structure of the Ohio EPA

The Ohio Environmental Protection Agency is a cabinet-level department whose Director is appointed by the Governor with consent of the Senate. It began operations on October 23, 1972, with personnel transferred from the Ohio Water Pollution Control Board, Ohio Air Pollution Control Board, Ohio Department of Natural Resources and the Ohio Department of Health. Since October, the Agency has grown and its statutory authority revised to meet the requirements of the NPDES program. Under existing law, the Ohio Environmental Protection Agency is responsible for all environmental protection programs of the state. It has sole state authority to administer the NPDES program.

To carry out the Agency's environmental programs, the organization has a functional structure. Most of the burden for the permit program is borne by the Divisions of Surveillance and Waste Management and Engineering. Other important functions are performed by the Divisions of Planning, Data and Systems, and Litigation and NPDES Permit Records. The organization chart, 2.2.2, shows the relationships of the various Divisions.

Division of Waste Management and Engineering

The Division operates through four district offices with central office coordination. Personnel of this Division are responsible for determining the time needed for compliance with permit effluent limitations. When a plan is developed for dealing with the wastewater discharge, this Division is responsible for plan approval. Once the facility is operating, they are responsible for inspecting the facilities to insure proper operation and maintenance. The district offices have primary responsibility for establishing the compliance schedules, approving plans, and inspecting facilities. The central office coordinates district operations and reviews proposed permits for consistency with policy.

Division of Surveillance

This Division operates through four district offices with central office coordination and technical support. The determination of allowable levels of pollutant discharge from a point source is one of the Division's responsibilities. Through a self-monitoring and field sampling program, the Division polices compliance with permit effluent limitations. To measure the effectiveness of the permit program, a water quality sampling program is carried out. The district offices are primarily responsible for determining permit conditions and following up on compliance monitoring. The central office develops the methods for surveillance, coordinates district activities and supports district operations.

Division of Planning

This Division's primary concern is with the long-term effects of a permit and consistency of permits with water quality basin plans.

305 of the Act, and national toxic and pretreatment effluent limitations pursuant to Section 307 of the Act, and

(iii) standards which prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a Permit to Install under Chapter EP-30 of the Ohio EPA Regulations, and

(iv) any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to Section 208 (b) of the Act, and

(v) any more stringent limitations required to comply with any other State or Federal law or regulation, including 40 C.F.R. Section 124.42.

(b) Prior to promulgation of regulations by the Administrator setting forth effluent standards and limitations, or standards of performance pursuant to the Act, the Director may impose standards, limitations, or conditions, in an Ohio NPDES permit necessary to insure compliance with Chapter 6111 of the Ohio Revised Code and the Act.

(2) Interim Limitations. Except as provided in paragraph (3) the Director may establish the maximum levels of pollutants which may be discharged during the period of the compliance program.

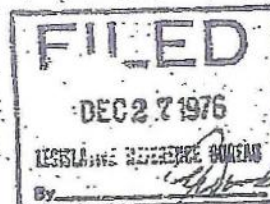
(3) Present Discharge Levels. The Director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either Final Limitations or Interim Limitations at the levels indicated by the applicant as its

3745-31-01 Definitions.

For purposes of these regulations, 3745-31-01 through 3745-31-08, the following definitions shall apply:

- (A) "Applicable laws" means any applicable provisions of Chapters 3704, 3734, 3745, and 6111 of the Ohio Revised Code, as amended; rules, regulations, and orders of the Ohio EPA; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and rules and regulations of the Administrator of the United States Environmental Protection Agency.
- (B) "Director" means the Director of the Ohio Environmental Protection Agency.
- (C) "Incinerator" means any equipment, machine, device, article, contrivance, structure or part of a structure used to burn refuse or to process refuse material by burning other than by open burning as defined herein.
- (D) "Install" (Installation) means to construct, erect, locate or affix any source of air pollutants or any treatment works.
- (E) "Modify" (Modification) means any
 - (1) physical change in, or change in the method of operation of,
 - (a) a source of air pollutants that
 - (i) increases the amount of air pollutants emitted, or
 - (ii) results in the emission of any type of air pollutants not previously emitted, or
 - (iii) results in relocation of the source to new premises, or
 - (b) a treatment works to allow it to process water pollutants
 - (i) in materially increased quantities, or
 - (ii) of a materially different character, or
 - (2) any material change in the
 - (a) total capacity, or
 - (b) finished topography, or

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EP-30-02 Permit to Install Required.

- (A) Except as provided in Section EP-30-03, no person shall cause, permit, or allow the installation of a new source of air pollutants or a new source treatment works; permit or allow modification of any source of air pollutants or any treatment works; or establish or modify a solid waste disposal facility, without first
- (1) applying for and obtaining a Permit to Install from the Ohio EPA, and
 - (2) if required, submitting and obtaining approval of detail plans for the source of air pollutants, treatment works, or solid waste disposal facility that satisfy the requirements of EP-30-05 (A).
- (B) The Ohio EPA may in its discretion require any person planning to install or modify, or in the process of installing or modifying, a source of air pollutants or a treatment works otherwise exempted by EP-30-03, to obtain a Permit to Install before proceeding further with installation or modification, if, in the opinion of the Director, operation of the source of air pollutants or treatment works after installation or modification might result in a violation of the criteria established in EP-30-05 (A).

(Former regulations AP-9-01 and AP-9-02, adopted July 24, 1972, and effective August 7, 1972, are repealed.)

(Adopted November 30, 1973, effective January 1, 1974.)

FILED
73 NOV 30 PM 3:21
SECRETARY OF STATE
PER SW

Public Law 92-500

AN ACT

To amend the Federal Water Pollution Control Act.

October 16, 1972
[S. 2779]

Federal Water
Pollution Control
Act Amendments
of 1972.

76 Stat. 499;
84 Stat. 91;
33 USC 1151
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Water Pollution Control Act Amendments of 1972".

Sec. 2. The Federal Water Pollution Control Act is amended to read as follows:

"TITLE I—RESEARCH AND RELATED PROGRAMS

"DECLARATION OF GOALS AND POLICY

"Sec. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

"(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

"(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

"(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

"(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

"(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

"(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

"(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

"(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

"(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called 'Administrator') shall administer this Act.

Administration.

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ogy and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements.

"(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

"(3) The provisions of this section shall apply to any new source owned or operated by the United States.

"(c) Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

"(d) Notwithstanding any other provision of this Act, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

"(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

"TOXIC AND DEGRADABLE EFFLUENT STANDARDS

"SEC. 307. (a) (1) The Administrator shall, within ninety days after the date of enactment of this title, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section. The Administrator in publishing such list shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.

"(2) Within one hundred and eighty days after the date of publication of any list, or revision thereof, containing toxic pollutants or combination of pollutants under paragraph (1) of this subsection, the Administrator, in accordance with section 553 of title 5 of the United States Code, shall publish a proposed effluent standard (or a prohibition) for such pollutant or combination of pollutants which shall take into account the toxicity of the pollutant, its persistence, degradability,

Standards of
performance,
State enforcement
procedures.

65A Stat. 51,
52 Stat. 508,
53 Stat. 667,
26 USC 167,
169.

Proposed
effluent stand-
ard, publication.

50 Stat. 383.

BALDWIN'S

OHIO REVISED CODE

ANNOTATED

1. The first step in the process of the development of a new product is the identification of a market need. This is often done through market research, which can be conducted in a number of ways. One common method is to conduct surveys or focus groups with potential customers. Another method is to analyze sales data from existing products to identify trends and gaps in the market.

2. Once a market need has been identified, the next step is to develop a concept for the new product. This involves brainstorming ideas and creating a rough sketch of the product. The concept should be based on the market need and should be unique and innovative.

3. The third step is to create a prototype of the product. This is a physical model of the product that can be used to test the concept and gather feedback from potential customers. The prototype can be made using a variety of materials and techniques, depending on the nature of the product.

4. The fourth step is to conduct a pilot test of the product. This involves distributing the prototype to a small group of potential customers and asking them to provide feedback. The feedback can be used to make improvements to the product and to determine if there is a market need for the product.

5. The final step is to launch the product into the market. This involves creating a marketing plan and promoting the product through various channels, such as social media, advertising, and sales. The goal is to reach as many potential customers as possible and to generate sales.

Title 9
Agriculture
Animals
Fences

WEST.

A Thomson Reuters business

REF: 41148299

Historical and Statutory Notes

Ed. Note: Former 903.012 amended and recodified as 3335.57 by 1981 H 583, eff. 3-16-82.

903.02 Permits to install

(A)(1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to install under this section.

(2) On and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to install shall submit an application to the director on a form that the director prescribes and provides together with a fee in an amount established by rule. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership, of all members if the applicant is a limited liability company, or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant. As used in division (C)(1) of this section, "control" means the power, directly or indirectly, to direct the management and policies of the applicant through the ownership of voting securities, by contract, through a right of approval or disapproval, or otherwise unless the power is held by a chartered lending institution as a result of debt liability.

(2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain;

(3) Designs and plans for the proposed construction of the concentrated animal feeding facility that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the director requires by rule;

(4) In the case of an application for a concentrated animal feeding facility that meets the criteria established in section 307.204 of the Revised Code, one of the following, as applicable:

(a) A written statement from the board of county commissioners of the county in which the concentrated animal feeding facility would be located certifying that, in accordance with that section, the applicant has provided the board with the required written notification and that final recommendations were selected regarding improvements, if any, to county infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(b) A notarized affidavit declaring that the applicant has met the criteria established in section 307.204 of the Revised Code and that a written, dated statement from the board of county commissioners was not received by the applicant under that section.

(5) In the case of an application for a concentrated animal feeding facility that meets the criteria established in section 505.266 of the Revised Code, one of the following, as applicable:

(a) A written statement from the board of township trustees of the township in which the concentrated animal feeding facility would be located certifying that, in accordance with that section, the applicant has provided the board with the required written notification and that final recommendations were selected regarding improvements, if any, to township infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(b) A notarized affidavit declaring that the applicant has met the criteria established in section 505.266 of the Revised Code and that a written, dated statement from the board of township trustees was not received by the applicant under that section.

(5) A statement
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calculation until
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(7) Informal
mental protecti
applicable:

5) Any other
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(6) A statement of the quantity of water that the concentrated animal feeding facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water;

(7) Information concerning the applicant's past compliance with laws pertaining to environmental protection that is required to be provided under section 903.05 of the Revised Code, if applicable;

(8) Any other information required by rule.

Information required to be included in an application for the modification of a permit to install, together with the applicable fee amount, shall be established in rules.

(D) The director shall issue permits to install in accordance with section 903.09 of the Revised Code. The director shall deny a permit to install if either of the following applies:

(1) The permit application contains misleading or false information.

(2) The designs and plans fail to conform to best management practices.

Additional grounds for the denial of a permit to install shall be those established in this chapter and rules.

(E) A permit to install shall expire after a period specified by the director unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The director may extend the expiration date of a permit to install upon request of the applicant.

(F) The director may modify, suspend, or revoke a permit to install in accordance with rules.

(G) Nothing in this chapter affects section 1521.16 of the Revised Code.

(H) The owner or operator of a concentrated animal feeding facility who proposes to make a major operational change at the facility shall submit an application for approval of the change to the director in accordance with rules.

2001 H 229, eff. 10-17-11; 2009 H 363, eff. 12-22-09 (Provisions subject to different operative dates); 2003 H 152, eff. 11-5-03; 2000 S 141, eff. 3-15-01

Uncodified Law

2009 H 363, § 3, eff. 12-22-09, reads:

The amendments by this act of divisions (C)(1) and (H) of section 903.02; divisions (A), (C)(1), and (I) of section 903.03; divisions (D) and (E)(1)(a) of section 903.04; sections 903.05, 903.06, and 903.07; divisions (A)(2) to (14) and (E) of section 903.10; section 903.16; and division (E) of section 903.17 of the Revised Code become operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

2000 S 141, § 4, eff. 3-15-01, reads:

A) As used in this section, "concentrated animal feeding operations," "animal feeding facilities," and "manure" have the same meanings as in section 903.01 of the Revised Code, as enacted by this act.

B) On the date on which the Director of Agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, as enacted by this act, the Director of Envi-

ronmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for the installation of disposal systems for concentrated animal feeding operations, animal feeding facilities, or manure that were issued on or before that date together with any related information that the Director of Agriculture requests;

(2) All permit applications and accompanying information that were submitted under division (J)(1) of section 6111.03 of the Revised Code prior to the date specified in division (B) of this section for the installation of disposal systems identified in that division.

(C) On the date on which the United States Environmental Protection Agency approves the NPDES program submitted by the Director of Agriculture under section 903.08 of the Revised Code, as enacted by this act, the Director of Environmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for

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pro se litigant's various contentions; and 3) pro se
litigant's assertions were either unsupported upon a
review of the regulations underlying the
program or they were grounded in specula-
tion as to what might occur if the dairy were to
operate its permit. *Follett v. Boggs*, ERAC 346221
(2-17-2010), 2010 WL 2008000.

2. Issuance of permit

The question of whether the proposed expansion
authorized by a permit to install ("PTI") issued by
the Director to a dairy may violate some aspect of a
township zoning code was not among the numerous
matters the Director was required to consider prior
to issuance of the permit, so that even if issuance of
the PTI violated a township zoning code, that did
not provide a basis upon which the Commission
could find the action of the Director to be unlawful
or unreasonable. *Muehlfeld v. Boggs*, ERAC
356228-356230 (3-17-2010), 2010 WL 1003489.

Appellants failed to assert how any alleged bias
of Ohio Department of Agriculture representatives
in any way affected the lawfulness or reasonable-
ness of the Director's issuance of a permit to install
a PTI to a dairy, so that appellants' claim of
bias demonstrated by representatives from the
Dept. of Agriculture at the informational
presentation and public meeting (hearing) on June

12, 2008" could not withstand a Civ. R. 12(B)(6)
motion to dismiss. *Muehlfeld v. Boggs*, ERAC
356228-356230 (3-17-2010), 2010 WL 1003489.

The Director reasonably and lawfully relied on
dairy's characterization of the site when reaching
his decision to issue permits. *Citizens Against
Mega-Dairies, LLC v. Dailey*, ERAC
245756-495759 (2-9-2010), 2010 WL 500336.

3. Revocation of permit

Reliable, probative, and substantial evidence sup-
ported conclusion by Environmental Review Ap-
peals Commission (ERAC) that director of Ohio
Department of Agriculture (ODA), in proceeding
to revoke permits to install and operate commercial
egg production facilities based on operator's failure
to disclose the identity of the holder of an option to
purchase operator, unreasonably ignored the testi-
mony of operator's expert witness as to the creation
of transactional and lending documents in favor of
ODA's expert in the general area of economics;
testimony of operator's expert was much more ger-
mane to the key issue of the amount of control
exercised by option holder. *Ohio Fresh Eggs, LLC
v. Wise* (Ohio App. 10 Dist., Franklin, 05-20-2008)
No. 07AP-780, 2008-Ohio-2423, 2008 WL 2122342,
Unreported. Food ⇐ 3

903.03 Permits to operate

(A)(1) Not later than one hundred eighty days after March 15, 2001, the director of
agriculture shall prepare a program for the issuance of permits to operate under this section.

(2) Except for a concentrated animal feeding facility that is operating under an installation
permit or a review compliance certificate, on and after the date on which the director has
finalized the program required under division (A)(1) of this section, no person shall own or
operate a concentrated animal feeding facility without a permit to operate issued by the
director under this section.

(3) The director or the director's authorized representative may help an applicant for a
permit to operate during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to operate shall submit a fee in an amount established by rule
together with, except as otherwise provided in division (E) of this section, an application to the
director on a form that the director prescribes and provides. The applicant shall include with
the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership,
of all members if the applicant is a limited liability company, or of all officers and directors if
the applicant is a corporation, and of any other person who has a right to control or in fact
controls management of the applicant or the selection of officers, directors, or managers of the
applicant. As used in division (C)(1) of this section, "control" has the same meaning as in
division (C)(1) of section 903.02 of the Revised Code.

(2) Information concerning the applicant's past compliance with laws pertaining to environ-
mental protection that is required to be provided under section 903.05 of the Revised Code, if
applicable;

(3) A manure management plan for the concentrated animal feeding facility that conforms
to best management practices regarding the handling, storage, transportation, and land
application of manure generated at the facility and that contains any other information
required by rule;

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(4) An insect and rodent control plan for the concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

(1) The permit application contains misleading or false information;

(2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

Additional grounds for the denial of a permit to operate shall be those established in this chapter and in rules.

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, shall submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual permit to operate.

(F) A permit to operate shall be valid for a period of five years.

(G) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing applications for permits to operate that are established under this section and by rules, including requirements pertaining to public notice and participation.

(H) The director may modify, suspend, or revoke a permit to operate in accordance with rules.

(I) The owner or operator of a concentrated animal feeding facility who proposes to make a major operational change at the facility shall submit an application for approval of the change to the director in accordance with rules.

(2009 H 363, eff. 12-22-09 (Provisions subject to different operative dates); 2000 S 141, eff. 3-15-01)

Uncodified Law

2009 H 363, § 3: See Uncodified Law under RC 903.02.

Historical and Statutory Notes

Ed. Note: Former 903.03 repealed by 1981 H 583, eff. 3-16-82; 1953 H 1; GC 1171.

Pre-1953 H 1 Amendments: 109 v 126; 107 v 460, 495; 106 v 122, § 2; 103 v 324, § 94

Ohio Administrative Code References

Additional requirements for a NPDES permit application, see OAC 901:10-3-01
Civil penalties, see OAC 901:10-5-04
Complaints, see OAC 901:10-5-01
Contents of public notices, see OAC 901:10-6-02

Criteria for issuing and renewing NPDES general permit to operate, see OAC 901:10-4-04
Enforcement procedures, see OAC 901:10-5-03
General operating permit, see OAC 901:10-4-05

903.08 National Pollutant Discharge Elimination System program and permits

(A)(1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of pollutants from concentrated animal feeding operations is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge pollutants from a concentrated animal feeding operation into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of pollutants from a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of pollutants from a concentrated animal feeding operation into the waters of the state prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by

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The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

1) The application contains misleading or false information.

2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.

3) The director determines that the proposed discharge or source would conflict with an statewide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.

2) The discharges are more appropriately authorized by a general permit than by an individual permit.

3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K)(1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to

the director pursuant to terms and conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M)(1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act: (2009 H 363, eff. 12-22-09; 2006 S 393, eff. 3-29-07; 2003 H 152, eff. 11-5-03; 2000 S 141, eff. 3-15-01)

Uncodified Law

2000 S 141, § 4: See Uncodified Law under 903.02.

2000 S 141, § 6, eff. 3-15-01, reads:

The amendments of this act to divisions (F)(3) and (4) of section 6111.04 of the Revised Code are not operative until the date on which the United States Environmental Protection Agency approves the NPDES program submitted by the Director of Agriculture under section 903.08 of the Revised Code as enacted by this act. Until that time, the Director of Environmental Protection shall continue to administer that section as it existed immediately prior to the effective date of this act. The exclusions established in divisions (B)(2) and (3) of section 6111.44 of the Revised Code, as amended by this act, shall not apply to animal waste treatment or disposal works having a controlled direct

discharge to the waters of the state until the date on which the Director of Agriculture finalizes the program required under section 903.02 of the Revised Code as enacted by this act. The exclusions established in divisions (B)(2) and (3) of section 6111.44 of the Revised Code, as amended by this act, also do not apply to the construction or installation of disposal systems, as defined in section 6111.01 of the Revised Code, that are located at an animal feeding facility and that store, treat, or discharge wastewaters that do not include storm water or manure or that discharge to a publicly owned treatment works.

As used in this section, "animal feeding facility" and "manure" have the meanings established in section 903.01 of the Revised Code, as enacted by this act.

Historical and Statutory Notes

Ed. Note: Former 903.08 repealed by 1981 H 583, eff. 3-16-82; 1953 H 1; GC 1170-2.

Pre-1953 H 1 Amendments: 124 v H 393; 114 v 506; 111 v 250, § 2

Cross References

Acts of pollution prohibited, exceptions, see 6111.04

Ohio Administrative Code References

Coordination of federal water pollution control act permit program with agencies of the United States, see OAC 901:10-6-03
Criteria for issuing and renewing NPDES general permit to operate, see OAC 901:10-4-04
General operating permit, see OAC 901:10-4-05
General permit to operate requirements, see OAC 901:10-4-01

Interim payments, see OAC 742-3-08
Manure management, livestock manager certificate, see OAC 901:10-1-01 et seq.
Manure storage and treatment facilities, see OAC 901:10-2-01 et seq.
Notice, see OAC 901:10-6-01
Notification of coverage, see OAC 901:10-4-03
NPDES fact sheets, see OAC 901:10-6-05

903.02 Program for issuance of permits to install.

(A)

(1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to install under this section.

(2) On and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to install shall submit an application to the director on a form that the director prescribes and provides together with a fee in an amount established by rule. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership, of all members if the applicant is a limited liability company, or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant. As used in division (C)(1) of this section, "control" means the power, directly or indirectly, to direct the management and policies of the applicant through the ownership of voting securities, by contract, through a right of approval or disapproval, or otherwise unless the power is held by a chartered lending institution as a result of debt liability.

(2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain;

(3) Designs and plans for the proposed construction of the concentrated animal feeding facility that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the director requires by rule;

(4) In the case of an application for a concentrated animal feeding facility that meets the criteria established in section 307.204 of the Revised Code, one of the following, as applicable:

(a) A written statement from the board of county commissioners of the county in which the concentrated animal feeding facility would be located certifying that, in accordance with that section, the applicant has provided the board with the required written notification and that final recommendations were selected regarding improvements, if any, to county infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(b) A notarized affidavit declaring that the applicant has met the criteria established in section 307.204 of the Revised Code and that a written, dated statement from the board of county commissioners was not received by the applicant under that section.

(5) In the case of an application for a concentrated animal feeding facility that meets the criteria established in section 505.256 of the Revised Code, one of the following, as applicable:

(a) A written statement from the board of township trustees of the township in which the concentrated animal feeding facility would be located certifying that, in accordance with that section, the applicant has provided the

board with the required written notification and that final recommendations were selected regarding improvements, if any, to township infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(b) A notarized affidavit declaring that the applicant has met the criteria established in section 505.266 of the Revised Code and that a written, dated statement from the board of township trustees was not received by the applicant under that section.

(6) A statement of the quantity of water that the concentrated animal feeding facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water;

(7) Information concerning the applicant's past compliance with laws pertaining to environmental protection that is required to be provided under section 903.05 of the Revised Code, if applicable;

(8) Any other information required by rule.

Information required to be included in an application for the modification of a permit to install, together with the applicable fee amount, shall be established in rules.

(D) The director shall issue permits to install in accordance with section 903.09 of the Revised Code. The director shall deny a permit to install if either of the following applies:

(1) The permit application contains misleading or false information.

(2) The designs and plans fail to conform to best management practices.

Additional grounds for the denial of a permit to install shall be those established in this chapter and rules.

(E) A permit to install shall expire after a period specified by the director unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The director may extend the expiration date of a permit to install upon request of the applicant.

(F) The director may modify, suspend, or revoke a permit to install in accordance with rules.

(G) Nothing in this chapter affects section 1521.16 of the Revised Code.

(H) The owner or operator of a concentrated animal feeding facility who proposes to make a major operational change at the facility shall submit an application for approval of the change to the director in accordance with rules.

Amended by 129th General Assembly File No. 42, HB 229, §1, eff. 10/17/2011.

Amended by 128th General Assembly File No. 12, HB 363, §1, eff. 12/22/2009, certain amendments operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

Effective Date: 11-05-2003

903.03 Program for issuance of permits to operate.

(A)

(1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to operate under this section.

(2) Except for a concentrated animal feeding facility that is operating under an installation permit, on and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall own or operate a concentrated animal feeding facility without a permit to operate issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to operate during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to operate shall submit a fee in an amount established by rule together with, except as otherwise provided in division (E) of this section, an application to the director on a form that the director prescribes and provides. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership, of all members if the applicant is a limited liability company, or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant. As used in division (C)(1) of this section, "control" has the same meaning as in division (C)(1) of section 903.02 of the Revised Code.

(2) Information concerning the applicant's past compliance with laws pertaining to environmental protection that is required to be provided under section 903.05 of the Revised Code, if applicable;

(3) A manure management plan for the concentrated animal feeding facility that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule;

(4) An insect and rodent control plan for the concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

(1) The permit application contains misleading or false information.

(2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

Additional grounds for the denial of a permit to operate shall be those established in this chapter and in rules.

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, shall submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual permit to operate.

(F) A permit to operate shall be valid for a period of five years.

(G) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing applications for permits to operate that are established under this section and by rules, including requirements pertaining to public notice and participation.

(H) The director may modify, suspend, or revoke a permit to operate in accordance with rules.

(I) The owner or operator of a concentrated animal feeding facility who proposes to make a major operational change at the facility shall submit an application for approval of the change to the director in accordance with rules.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 128th General Assembly File No. 12, HB 363, §1, eff. 12/22/2009, certain amendments operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

Effective Date: 03-15-2001

903.08 Participating in national pollutant discharge elimination system.

(A)

(1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of pollutants from concentrated animal feeding operations is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B)

(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge pollutants from a concentrated animal feeding operation into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of pollutants from a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of pollutants from a concentrated animal feeding operation into the waters of the state prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C)

(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act.

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Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

- (2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information.
- (2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.
- (3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general permit than by an individual permit.
- (3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

- (G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards

adopted under section 6111.041 of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K)

(1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M)

(1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

Amended by 128th General Assembly File No. 12, HB 363, §1, eff. 12/22/2009.

Effective Date: 11-05-2003; 03-29-2007

903.10 Administrative rules for permits to install and permits to operate.

The director of agriculture may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(A) Establish all of the following concerning permits to install and permits to operate:

- (1) A description of what constitutes a modification of a concentrated animal feeding facility;
- (2) A description of what constitutes a major operational change at a concentrated animal feeding facility;
- (3) The amount of the fee that must be submitted with each permit application and each application for a permit modification;
- (4) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;
- (5) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;
- (6) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;
- (7) Information that must be included in an application for approval of a major operational change at a concentrated animal feeding facility;
- (8) Any additional information that must be included with a permit application;
- (9) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;
- (10) Procedures for the approval or denial of an application for approval of a major operational change at a concentrated animal feeding facility;
- (11) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to the grounds established in division (D) of section 903.02 and division (D) of section 903.03 of the Revised Code;
- (12) Grounds for the denial of an application for approval of a major operational change at a concentrated animal feeding facility;
- (13) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously;
- (14) A definition of "general permit to operate" that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for issuing a general permit to operate and the criteria for determining a person's eligibility to operate under a general permit to operate.

(B)

Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

- (1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (B)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application.
- (2) Disposal of dead livestock;
- (3) Production of biodiesel, biomass energy, electric or heat energy, and biologically derived methane gas as those terms are defined in section 5713.30 of the Revised Code;
- (4) Any other activity that the director considers appropriate.

Best management practices established in rules adopted under division (B) of this section shall not conflict with best management practices established in rules that have been adopted under any other section of the Revised Code. The rules adopted under division (B) of this section shall establish guidelines that require owners or operators of concentrated animal feeding facilities to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure.

(C) Establish all of the following concerning insect and rodent control plans required under section 903.06 of the Revised Code:

- (1) The information to be included in an insect and rodent control plan;
- (2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;
- (3) Criteria for determining compliance with or violation of an insect and rodent control plan;
- (4) Procedures and standards for monitoring insect and rodent control plans;
- (5) Procedures and standards for enforcing insect and rodent control plans at concentrated animal feeding facilities at which insects or rodents constitute a nuisance or adversely affect public health;
- (6) The amount of civil penalties for violation of an insect and rodent control plan assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code, provided that the rules adopted under division (C)(6) of this section shall not establish a civil penalty of more than ten thousand dollars for a violation involving a concentrated animal feeding facility that is not a major concentrated animal feeding facility and shall not establish a civil penalty of more than twenty-five thousand dollars for a violation involving a major concentrated animal feeding facility;
- (7) The time period within which the director must approve or deny an insect and rodent control plan after receiving it;
- (8) Any other provisions necessary to administer and enforce section 903.12 of the Revised Code.

(D) Establish all of the following concerning livestock manager certifications required under section 903.07 of the Revised Code:

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(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

~ (2) The content of the training required to be completed and of the examination required to be passed by an applicant for a livestock manager certification. The training shall include and the examination shall test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;

(4) The length of time during which livestock manager certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;

(6) Requirements governing the management and handling of manure, including the land application of manure;

~ (7) Requirements governing the keeping of records regarding the handling of manure, including the land application of manure;

(8) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.

(E) Establish all of the following concerning NPDES permits:

(1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code;

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution

Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;

~ (6) The amount of the fee that must be submitted with an application for a permit;

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(7) Procedures for processing permit applications, including public notice and participation requirements;

(8) Procedures for notifying the United States environmental protection agency of the submission of permit applications, the director's action on those applications, and any other reasonable and relevant information;

(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(10) Procedures for the transfer of permits to new owners or operators;

(11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of permits, including general permits;

(12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit.

The rules adopted under division (E) of this section shall be consistent with the requirements of the Federal Water Pollution Control Act.

(F) Establish public notice and participation requirements, in addition to the procedures established in rules adopted under division (E)(7) of this section, for the issuance, denial, modification, transfer, suspension, and revocation of permits to install, permits to operate, and NPDES permits consistent with section 903.09 of the Revised Code, including a definition of what constitutes significant public interest for the purposes of divisions (A) and (F) of section 903.09 of the Revised Code and procedures for public meetings. The rules shall require that information that is presented at such a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting.

(G) Establish the amount of civil penalties assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code for violation of the terms and conditions of a permit to install or permit to operate, provided that the rules adopted under this division shall not establish a civil penalty of more than ten thousand dollars per day for each violation;

(H) Establish procedures for the protection of trade secrets from public disclosure. The procedures shall authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act. The rules shall require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. Rules adopted under this division do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under section 903.08 of the Revised Code or rules adopted under division (E) of this section.

(I) Establish any other provisions necessary to administer and enforce this chapter.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 129th General Assembly File No. 82, HB 276, §1, eff. 6/4/2012.

Amended by 128th General Assembly File No. 12, HB 363, §1, eff. 12/22/2009, certain amendments operative on the date on which the Administrator of the United States Environmental Protection Agency

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approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

Effective Date: 11-05-2003

901:10-2-02 Permit to install: siting criteria.

Manure storage or treatment facilities shall be designed and constructed in accordance with the criteria in paragraphs of (A) to (N) of this rule. In this rule siting means a measure of horizontal or vertical distance for purposes of installing the manure storage or treatment facility.

(A) Water wells and/or class five agricultural drainage wells together hereinafter are referred to as "well".

(1) A fabricated structures shall be at least fifty horizontal feet from a well.

(2) A manure storage pond or manure treatment lagoon shall be at least three hundred horizontal feet from a well.

(B) Source water protection for public water systems.

(1) Public water wells.

(a) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within three hundred feet of a well serving a public water system that is owned or operated by the owner or operator of the facility and is a public water system located on the property of the owner or operator of the facility.

(b) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within the one-year time-of-travel contour from a well for which the Ohio environmental protection agency has delineated or endorsed a ground water source protection area and that serves a non-community water system not listed in paragraph (B)(1)(a) of this rule. If no ground water source protection area has been delineated or endorsed, then the fabricated structure, manure storage pond, or manure treatment lagoon shall not be located closer than three hundred feet from the well.

(c) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within the one-year time-of-travel contour from a well for which the Ohio environmental protection agency has delineated or endorsed a ground water source protection area and that serves a community water system not listed in paragraph (B)(1)(a) of this rule or one thousand feet from a public water well whichever is greater.

(d) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located between the one-year and five-year time-of-travel contours from a well identified as highly susceptible unless additional ground water monitoring, or additional engineered controls or both are added, installed, and implemented as approved by the director.

(2) Surface water intake.

(a) A fabricated structure shall be located no closer than one thousand five hundred feet from a surface water intake.

(b) A manure storage pond or manure treatment lagoon shall be installed no closer than one thousand five hundred feet from a surface water intake.

(C) Streams.

(1) Fabricated structures.

(a) A fabricated structure on a concentrated animal feeding facility shall be located a minimum of one hundred twenty horizontal feet from a stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(b) A fabricated structure on a major concentrated animal feeding facility shall be located a minimum of three hundred horizontal feet from a stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(2) A manure storage pond or manure treatment lagoon.

(a) A manure storage pond or manure treatment lagoon on a concentrated animal feeding facility shall be located a minimum of three hundred horizontal feet from a stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(b) A manure storage pond or manure treatment lagoon on a major concentrated animal feeding facility shall be located a minimum of six hundred horizontal feet from a stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(D) Cold water habitat and seasonal salmonid streams.

(1) A fabricated structure shall be located a minimum of three hundred horizontal feet from a cold water habitat or seasonal salmonid stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(2) A manure storage pond or manure treatment lagoon shall be located a minimum of six hundred horizontal feet from a cold water habitat and seasonal salmonid stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(E) Aquifer.

A fabricated structure, manure storage pond or manure treatment lagoon shall have fifteen vertical feet of low permeability material, between the waste placement location and the uppermost aquifer, unless additional design criteria or groundwater monitoring, or both, are added, installed, and implemented as approved by the director.

(1) If additional design criteria or groundwater monitoring are added, installed or implemented, the manure storage pond or manure treatment lagoon shall have a minimum of five vertical feet of low permeability material, between the waste placement surface and the uppermost aquifer.

(2) As used in this rule and in Chapter 901:10-2 of the Administrative Code, low permeability material means low permeability among the soil types of geologic material presented in figure 7-11, Chapter 7, "Geologic and Ground Water Considerations," part 651, "Agricultural Waste Management Field Handbook," August 2010.

(F) Sole source aquifer.

A manure storage pond or manure treatment lagoon shall not be located above a sole source aquifer without design of ground water monitoring or engineered controls or both that are installed and implemented as approved by the director.

(G) Floodplains and floodways.

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(1) The production area of a facility shall not be located in a one hundred year floodplain, as those boundaries are shown on the applicable maps prepared under the "National Flood Insurance Act of 1968," 82 Stat. 572, 16 U.S.C.A. 4001, as amended, without design of additional monitoring or engineered controls or both that are installed and implemented as approved by the director and in accordance with the following.

(a) The manure storage pond or manure treatment lagoon embankments and any wall of a fabricated structure shall be designed and constructed to withstand the hydrostatic pressures from a one hundred year flood that may be exerted on the embankments or walls during a flood event;

(b) The elevation of the top of the manure storage or treatment facility shall be at the summation of the elevation of the one hundred year flood plus a minimum freeboard height of two feet;

(c) Any monitoring wells installed pursuant to this rule shall be physically protected from the floodwaters.

(2) A manure storage pond or manure treatment lagoon or fabricated structure shall not be located in established regulator floodways as designated by the federal emergency management agency.

(H) Karst areas.

A fabricated structure, manure storage pond or manure treatment lagoon shall not be located in a karst area without design of groundwater monitoring or engineered controls or both that are installed and implemented as approved by the director.

(I) Bedrock.

A fabricated structure, manure storage pond or manure treatment lagoon shall be located a minimum of three feet, between the bottom of the waste placement location and bedrock where no aquifer is present.

(J) Mines.

A manure storage or treatment facility shall not be located in an area of potential subsidence, due to an underground mine known to be in existence prior to the date the application for a permit to install is submitted, without design of groundwater monitoring or engineered controls or both that are installed and implemented as approved by the director.

(K) Property lines, which are defined in this paragraph as property lines not under common ownership of the owner or operator of a facility covered by this rule and public roads.

A fabricated structure, manure storage pond or manure treatment lagoon shall be located no closer than one hundred horizontal feet from a property line or public road.

(L) Neighboring residences.

(1) A manure storage or treatment facility for solid manure at a concentrated animal feeding facility shall be no closer than five hundred horizontal feet from any neighboring residence.

(2) The manure storage or treatment facility for solid manure at a major concentrated animal feeding facility shall be no closer than one thousand horizontal feet from any neighboring residence.

(3) A manure storage or treatment facility for liquid manure at a concentrated animal feeding facility shall be no closer than one thousand horizontal feet from any neighboring residence.

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(4) A manure storage or treatment facility for liquid manure at a major concentrated animal feeding facility shall be no closer than two thousand horizontal feet from any neighboring residence.

(5) When utilizing proven technology, the siting criteria may be reduced by the director by using the list of technologies appended to this rule. The technologies listed in this appendix are not inclusive of all available technologies. Selected technologies are required to be fully described in detail plans and specifications, engineering drawings, and maps that shall be reviewed and approved by the director in deciding whether or not to reduce any applicable siting criteria as a reasonable exercise of the director's discretion.

(M) The siting criteria requirements applicable to a manure storage or treatment facility shall not apply to the criteria set forth in paragraphs (K) and (L) of this rule if the applicant for a permit to install obtains a written agreement from all of the owners of neighboring residences or property owners located closer than the siting criteria.

The agreement shall state such owners are aware of the proposed construction and have no objections to such construction. A copy of the written agreement shall be included with the permit to install application. The written agreement may be filed in the register of deeds office of the county in which the neighboring residence is located.

(N) As used in this rule, additional design for engineered controls includes but is not limited to additional freeboard, secondary containment, additional treatment, increased liner thickness, synthetic liner materials, groundwater monitoring, or design and construction alternatives set forth in paragraph (A)(9)(c) of rule 901:10-2-06 of the Administrative Code.

[Click to view Appendix](#)

Effective: 06/08/2014

R.C. 119.032 review dates: 03/21/2014 and 06/08/2019

Promulgated Under: 119.03

Statutory Authority: 903.08, 903.10

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Prior Effective Dates: 9/1/2011, 1/23/2009, 1/17/2006, 9/15/2005, 7/2/2002

901:10-2-07 Contents of a permit to operate and NPDES applications.

(A) The application for a permit to operate and for a NPDES permit shall contain the following information:

(1) A manure management plan that is developed and implemented to comply with the best management practices set forth in rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and 901:10-2-18 of the Administrative Code, and

(2) Plans or schedules for inspections required in rule 901:10-2-08 of the Administrative Code.

(B) Additional requirements for an application for a permit to operate include submittal of:

(1) An insect and rodent control plan that conforms to best management practices and is in accordance with rule 901:10-2-19 of the Administrative Code.

(2) A plan for odor minimization in accordance with rule 901:10-2-12 of the Administrative Code.

(3) An emergency response plan in accordance with rule 901:10-2-17 of the Administrative Code.

(C) Additional requirements for an application for a NPDES permit for a large concentrated animal feeding operation shall contain the information required in Chapter 901:10-3 of the Administrative Code.

(D) If a biosecurity plan is submitted, it shall be included with the permit to operate application.

(E) The owner or operator shall maintain a copy of the current permit to operate and NPDES permit issued by the department at the concentrated animal feeding facility's site office.

(F) Additional requirements for an application for a NPDES permit for a medium or small concentrated animal feeding operation may also include best management practices specified by the director.

R.C. 119.032 review dates: 05/10/2011 and 05/10/2016

Promulgated Under: 119.03

Statutory Authority: 903.08, 903.10

Rule Amplifies: 903.01, 903.02, 903.03, 903.04, 903.05, 903.07, 903.08, 903.081, 903.082, 903.09, 903.10

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